

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

**APRIL TERM, 1910.**

**No. 2151.**

**729**

ARLINGTON BREWING COMPANY, WILSON CATHERWOOD AND MAGNUS BROWN, COPARTNERS, TRADING UNDER THE NAME OF H. AND H. W. CATHERWOOD; ALFRED E. NORRIS & CO., M. F. McDONOUGH AND COMPANY, THE J. A. LEARY COMPANY, GEORGE J. RECORDS AND HARRY P. GOLDSBOROUGH, THE BUCKEYE DISTILLERY COMPANY, AND BRIDGET L. DONOHUE, APPELLANTS,

*vs.*

EDWARD H. WYVILL, PATRICK E. DALY, HARRY HAMBURGER AND PHILIP HAMBURGER, COPARTNERS, TRADING AS HAMBRO DISTILLING AND DISTRIBUTING COMPANY; CHR. HEURICH BREWING COMPANY, FERDINAND MEYER AND R. WALTER GRAHAM, TRADING AS MEYER, PITTS AND COMPANY; DANIEL LOUGHRAN, AND S. GRABFELDER AND COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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**FILED APRIL 14, 1910.**

*Oct. 18,*





# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

APRIL TERM, 1910.

No. 2151.

ARLINGTON BREWING COMPANY, H. AND H. W. CATHERWOOD, ALFRED E. NORRIS & CO., M. F. McDONOUGH AND COMPANY, THE J. A. LEARY COMPANY, RECORDS AND GOLDSBOROUGH, THE BUCKEYE DISTILLERY COMPANY, AND BRIDGET L. DONOHUE, APPELLANTS,

vs.

EDWARD H. WYVILL, PATRICK E. DALY, HAMBRO DISTILLING COMPANY, CHR. HEURICH BREWING COMPANY, MEYER, PITTS AND COMPANY, DANIEL LOUGHRAN, AND S. GRABFELDER AND COMPANY, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

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No. 2151.

ARLINGTON BREWING COMPANY et al., Appellants,  
vs.  
EDWARD H. WYVILL et al.

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*a* Supreme Court of the District of Columbia.

No. 27988. Equity.

EDWARD H. WYVILL, Complainant,  
vs.  
PATRICK E. DALY, ALEXANDER H. BELL, CLARENCE WALMSLEY,  
George J. Records, Harry P. Goldsborough, Frank P. Madigan,  
Philip Schwartz, Defendants.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed August 13, 1908.

In the Supreme Court of the District of Columbia.

No. 27988. Equity.

EDWARD H. WYVILL  
vs.  
PATRICK E. DALY, ALEXANDER H. BELL, CLARENCE WALMSLEY,  
George J. Records, Harry P. Goldsborough, Frank P. Madigan,  
Philip Schwartz.

To the Honorable the Justice of said Court:

The bill of complaint of the above named complainant respectfully shows:

1. That your complainant is a citizen of the United States and a

resident of the District of Columbia, and brings this suit in his own right as a judgment creditor of the defendant Patrick E. Daly; and on behalf of such other judgment creditors of said defendant Daly as may properly intervene and become parties hereto.

2. The defendants Patrick E. Daly, Alexander H. Bell, Clarence Walmsley, Frank P. Madigan and Philip Schwartz are residents of the District of Columbia; the defendants George J. Records and Harry P. Goldsborough are residents of the City of Baltimore, State of Maryland; all of said defendants are citizens of the United States; the defendant Patrick E. Daly is sued in his own right; the defendants Bell, Walmsley and Madigan are sued as trustees under the deeds of trust hereinafter mentioned and the defendants Schwartz, Records and Goldsborough are sued as the beneficiaries under the said deeds of trust.

3. That your complainant on the twenty-seventh (27) day of July, A. D. 1908, recovered a judgment against the defendant Patrick E. Daly in Law Cause No. 50,716 of this Honorable Court for the sum of five hundred dollars (\$500.00) with interest at 6% from October 26, 1907, besides costs of suit, upon which a writ of fieri facias was issued on the twelfth (12) day of August, A. D. 1908, and returned "Nulla Bona" by the United States Marshal for said District, all of which will more fully appear upon reference to a short copy of the said judgment filed herewith, marked "Exhibit E. H. W. No. 1" to which your complainant refers and prays that the same may be read as part hereof at the final or any other hearing of this cause; and such judgment remains wholly unsatisfied.

4. That the said defendant Patrick E. Daly has no property real or personal, so far as your complainant has been able to ascertain, which is subject to execution at law. The said defendant Daly is however the owner of an equitable interest in and to certain goods, chattels, and personal property hereinafter set forth and described.

5. That for the past three years or more the said defendant Daly has been engaged in conducting a restaurant and retail liquor business in premises numbered 1126 Seventh Street, northwest, in the City of Washington, District of Columbia; and is the owner of certain bar fixtures and paraphernalia of trade used by him in the conduct of such business, as also of a stock of wines, liquors, cigars and tobacco used in said business, as also a license for the sale of liquor at retail in said premises, and a lease of said premises from the owner thereof for a term unknown to your complainant.

6. That the said defendant Daly, being possessed of the above mentioned personal property, license and lease, by a deed of trust dated August 29, 1907, and duly recorded among the Land Records of the District of Columbia on said date in liber numbered 3099 at folio 133 et sequiter, did convey the same to the defendants Bell and Walmsley in trust to secure an indebtedness to the defendants George J. Records and Harry P. Goldsborough, co-partners trading under the firm name of Records and Goldsborough, in the sum of fifteen hundred dollars (\$1,500.00), represented by fifteen (15) promissory notes for the sum of one hundred dollars (\$100.00) each, dated



August 29, 1907, and payable monthly in from one (1) to fifteen (15) months after date to the order of said Records and Goldsborough with interest at the rate of 5% per annum, all of which will more fully appear upon reference to said deed of trust recorded as aforesaid, the record of which your complainant prays leave to read as part hereof at the final or any other hearing of this cause. Your complainant is not advised as to how much, if anything, is due or unpaid of the indebtedness secured by said deed of trust and calls upon the defendants Daly, Records and Goldsborough to make discovery in their answer hereto as to the amount, if any, that is  
4 still due and unpaid upon the several notes secured thereby.

7. That thereafter, the said defendant Daly being liable as endorser to the defendant Philip Schwartz upon a certain promissory note for the sum of two thousand dollars (\$2,000.00) executed by one Pierre Bonsieigneur to the order of said Daly, dated October 21, 1907, and payable on demand with 6% interest, the endorsement of the said Daly thereon being for the accommodation of the said Bonsieigneur, did convey the property mentioned in the preceding paragraph, by deed of trust to secure the payment of said note, said trust being dated October 21, 1907, and recorded on the same day in liber numbered 3092 at folio 372 of said Land Records, all of which will more fully appear upon reference to said deed of trust recorded as aforesaid, the record of which your complainant prays leave to read as part hereof at the final or any other hearing of this cause. Your complainant is not advised as to how much, if anything, is due and unpaid of the indebtedness secured by said deed of trust and calls upon the defendants Schwartz and Daly to make discovery in their answer hereto as to the amount, if any, that is still due and unpaid upon said note. Complainant is further informed and believes and upon such information and belief, avers that *that* said promissory note of the said Bonsieigneur and so as aforesaid secured by said deed of trust is as to the defendant Daly a collateral security, the same being primarily secured by a certain deed of trust dated October 21, 1907, and recorded on the same day in liber num-

5 bered 3092 at folio 370 et sequiter of said Land Records, executed by said Bonsieigneur and wife to the defendants Bell and Madigan, and conveying certain personal property in premises numbered 1311 "E" Street, northwest, in said City and District, therein described, and a license for the sale of liquor at retail in said premises issued to the said Bonsieigneur, all of which will more fully appear upon reference to said deed of trust recorded as aforesaid, the record of which your complainant prays leave to read as part hereof at the final or any other hearing of this cause; that the said defendant Daly is entitled to have payment of said promissory note enforced against the security so as aforesaid given by said Bonsieigneur and such security exhausted before payment thereof is enforced under the deed of trust executed by the defendant Daly, against the property of said defendant Daly from which complainant seeks satisfaction of his said judgment.

8. That this complainant is informed and believes and upon such information and belief alleges it is a fact that the ownership of a

license for the sale of liquor at retail in the District of Columbia constitutes a franchise of great value, which is due to the fact that few, if any, new licenses are issued and to the further fact that when once issued the same have a high and ready market; that the license owned by the defendant Daly together with the lease to him of the premises aforesaid constitute the most valuable portion of the assets of the said defendant Daly; that the bar fixtures and stock in trade hereinbefore referred to are not worth independently of said license

more than the sum of five hundred dollars (\$500.00), but  
6 that in conjunction with said lease and license constitute a going retail liquor business of the value of at least five thousand dollars (\$5,000.00). That unless said fixtures, lease, license and stock in trade are sold as a going business, complainant's judgment will be utterly lost.

9. That the said defendant Daly is in possession of the said goods and chattels, and is using the same in conducting said business, and by the use thereof the same are daily depreciating in value and being dissipated; that the said retail liquor license expires on November 1, 1908, subject to a renewal for a further term of one year upon payment of the sum of \$800.00 and is therefore daily depreciating in value and must be speedily sold if complainant is to realize anything thereon; that in view of the conditions above set forth it is necessary that a receiver or receivers should be appointed pending this cause to take possession and charge of the said goods, chattels, license and lease and hold the same subject to the order of this Honorable Court.

10. That your complainant is informed and believes and upon such information and belief avers that under the license system and procedure in force in this District in the event of the transfer of a liquor license it is necessary to file such license or certificate evidencing the same with the Clerk of the Excise Board of said District with the endorsement thereon of the licensee or his attorneys thereto properly authorized; whereupon unless cause to the contrary be shown such license is transferred and the fact of such transfer is  
7 endorsed upon the face of such certificate; that such transfer will not be granted unless such certificate is deposited as aforesaid, nor will, under the circumstances of this case, a duplicate of such license certificate be issued; that therefore it is necessary that the receiver or receivers should have physical possession of said license certificate.

Wherefore, being without remedy at law, your complainant prays:

1. That the writ of subpoena issue requiring said defendants to appear and answer the exigencies of this bill.

2. That a receiver or receivers be appointed pending this cause to take possession of said goods, chattels, license and lease, with authority to demand of the defendant Daly the delivery to said receiver or receivers of the license or certificate mentioned herein and the lease for said premises, and that upon failure of said Daly so to deliver the same to such receiver or receivers that the Court use its powers to punish for contempt in failing so to do.

3. That all proper and necessary rules to show cause in the prem-



ises be laid and served upon said defendant Daly and particularly that a rule to show cause be issued and served upon him why a receiver or receivers should not be appointed to take charge of said goods and chattels and why he should not be required to deliver up said license and lease to said receiver.

4. That the said goods, chattels and personal property, license and lease be sold and disposed of as a going retail liquor business under the direction of this Court and the proceeds after paying all prior legal liens, be applied to the satisfaction of your complainant's judgment.

8 5. That pending these proceedings the defendant Daly be enjoined and restrained from selling, removing or in any manner interfering with said goods, chattels and personal property, license and lease, or any part thereof.

6. That all necessary orders and references for an accounting be made and had.

7. That your complainant have such other and further relief as the nature of the case may require.

EDWARD H. WYVILL,  
LEON TOBRINER,  
*Solicitor- for Complainant.*

The defendants to this bill are: Patrick E. Daly, Alexander H. Bell, Clarence Walmsley, George J. Records, Harry P. Goldsborough, Frank P. Madigan, Philip Schwartz.

I, Edward H. Wyvill, on my oath do depose and say that I have heard read the foregoing bill by me subscribed and know the contents thereof; that the statements therein made of my personal knowledge are true, and those made upon information and belief, I believe to be true.

EDWARD H. WYVILL.

Subscribed and sworn to before me this 13th day of August, A. D. 1908.

J. R. YOUNG, *Clerk,*  
By F. W. SMITH,  
*Ass't Clerk.*

9 "EXHIBIT E. H. W. No. 1."

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 50716.

EDWARD H. WYVILL, Plaintiff,

vs.

PATRICK E. DALY, Defendant.

1908, July 27th.—Judgment for plaintiff for.....	\$500.00
with interest from October 26th, 1907.	
Cost of Protest .....	
[SEAL.] Costs of Suit .....	20.20
" add'l to Satisfy.....	.40
Less credit, of \$— paid.....	

1908, Aug. 12".—Fi. Fa., issued.

" " " " " returned "Nulla Bona."

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
By FRED C. O'CONNELL,  
*Ass't Clerk*.

August 12", 1908.

10

*Subpœna to Answer.*

Issued August 13, 1908.

\* \* \* \* \*

The President of the United States to Patrick E. Daly, Defendant:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of the Original Bill, under pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 13th day of Aug. A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk*,  
By F. W. SMITH,  
*Assistant Clerk*.

*Memorandum.*

That the defendant, herewith served, is to enter his appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

*Marshal's Return.*

Returned Aug. 15, 1908.

Summoned defendant Patrick E. Daly personally Aug. 13, 1908.

AULICK PALMER, *Marshal*.  
H.

11

*Subpœna to Answer.*

Issued August 14, 1908.

\* \* \* \* \*

The President of the United States to Alexander H. Bell, Clarence Walmsley, George J. Records, Harry P. Goldsborough, Frank P. Madigan, Philip Schwartz, Defendants:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of



the original Bill, under pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 14th day of August, A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk*,  
By F. E. CUNNINGHAM,  
*Assistant Clerk*.

*Memorandum.*

That the defendant, herewith served, is to enter appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

*Marshal's Return.*

Returned Sep. 1, 1908.

Summoned defendants as follows:

12 (1) Alexander H. Bell and (7) Philip Schwartz personally Aug. 15, 1908.

(6) Frank P. Madigan personally Aug. 18, 1908.

Clarence Walmsley, George J. Records and Harry P. Goldsborough not to be found Sept. 1st 1908.

AULICK PALMER, *Marshal*.  
H.

*Rule to Show Cause.*

Filed August 14, 1908.

\* \* \* \* \*

Upon consideration of the bill of complaint filed herein, it is by the Court, this fourteenth (14) day of August, A. D. 1908, ordered that the defendant Patrick E. Daly, show cause, if any he have, why a receiver or receivers should not be appointed as prayed for in said bill, on Tuesday, August 25, 1908, at ten o'clock, A. M.; provided a copy of this order be served upon said defendant Daly not later than August 18, 1908.

JOB BARNARD *Justice*.

13

*Marshal's Return.*

Served copy of the within order on Patrick E. Daly personally Aug. 15, 1908.

AULICK PALMER, *Marshal*.  
H.

*Order for Appearance.*

Filed September 1, 1908.

\* \* \* \* \*

The Clerk of said Court will enter my appearance for defendants Patrick E. Daly, Alexander H. Bell, Clarence Walmsley, George J.

Records, Harry P. Goldsborough, Frank P. Madigan and Philip Schwartz.

ALEXANDER H. BELL, *Solicitor.*

*Answer of Patrick E. Daly.*

Filed September 3, 1908.

\* \* \* \* \*

To the Honorable the Justice of said Court:

The answer of the defendant Patrick E. Daly to the rule to show cause against him in this case issued, respectfully shows:

14        1. That this defendant admits he is the judgment debtor mentioned in said bill but this defendant denies that he is insolvent. The truth in said regard is that if his place of business is properly attended to and conducted by a Receiver to be appointed by the Court, that all of his creditors will receive what is due them from such receipts and that said place of business if sold, should bring more than any indebtedness which this defendant owes.

Answering further this defendant says, that he submits to the jurisdiction of the Court in this cause and agrees that a Receiver may be appointed to take charge of said business and in this connection this defendant suggests the appointment as such Receiver, of John A. Barnes who is a retired saloon keeper and has the reputation of being a successful business man.

PATRICK E. DALY.

DISTRICT OF COLUMBIA, ss:

I, Patrick E. Daly, on oath depose and say, that I have heard read the foregoing Answer by me subscribed and know the contents thereof; that those facts stated therein upon personal knowledge are true and those stated upon information and belief, I believe to be true.

PATRICK E. DALY.

Subscribed and sworn to before me this 3 day of September A. D., 1908.

JNO. R. YOUNG, *Clerk,*  
By R. P. BELEW, *Ass't*        “

15        *Order Appointing John A. Barnes Receiver, &c.*

Filed September 3, 1908.

\* \* \* \* \*

Upon consideration of the Bill, exhibits and affidavits filed herein, and the answer of the defendant, Patrick E. Daly, to the rule to show cause why a receiver should not be appointed, it is this Third (3) day of September, A. D. 1908, ordered, that John A. Barnes be, and he is hereby appointed receiver herein to take possession, cus-



tody and charge of the property, assets and licenses of the said Patrick E. Daly referred to in the Bill of Complaint, and particularly, of the stock in trade, fixtures and paraphernalia of trade in the saloon and premises known as and numbered 1126 Seventh Street, Northwest, in the City of Washington, D. C., all licenses for the sale of liquor in said premises, and the lease for said premises now held by the said defendant Daly, and the said defendant is hereby directed and required to deliver possession thereof and assign and transfer the same to the said receiver.

The said receiver is further authorized to continue the conduct of the restaurant and retail liquor business of the said defendant in said premises, purchasing the necessary stock, hiring such clerks, agents and assistants as may be necessary and paying the expenses thereof from the receipts of such business.

And it is further ordered that the said receiver, before entering upon the discharge of his duties give bond in the penalty of two thousand dollars with sufficient surety or sureties conditioned for the faithful performance of his duties in the premises.

By the Court.

WENDELL P. STAFFORD, *Justice*.

*Memorandum.*

September 4, 1908.—Bond of Receiver for \$2,000.00 approved and filed.

*Petition for Intervention.*

Filed September 18, 1908.

\* \* \* \* \*

The petition of Harry Hamburger and Philip Hamburger, Jr., co-partners trading as the Hambro Distilling & Distributing Company, and of the Italian Swiss Colony, a corporation, respectfully shows to the Court:

1st. That they are judgment creditors of said Patrick E. Daly on which execution has been issued and returned by the Marshal.

2nd. That your complainants, Harry Hamburger and Philip Hamburger, Jr. are citizens of the state of Maryland and residents of the City of Baltimore, and that your complainant, Italian Swiss Colony, is a corporation under the laws of the State of ——. That the citizenship of the defendants is as shown by the original bill of complaint filed herein.

3rd. That said Harry Hamburger and Philip Hamburger, Jr., co-partners trading as Hambro Distilling & Distributing Company, and Italian Swiss Colony, a corporation, are desirous of intervening in the said cause.

Wherefore, your petitioners pray:

1. That they may be admitted as parties plaintiff in said cause and

allowed to file their intervening petition as attached hereto and shown to the court.

2. For such further and other relief, as the nature of the case may require.

HARRY HAMBURGER AND  
PHILIP HAMBURGER, JR.,  
*Trading as Hambro Dist. & Dist. Co.,*  
By H. WINSHIP WHEATLEY,  
*Their Attorney and Solicitor,*  
ITALIAN SWISS COLONY,  
By H. WINSHIP WHEATLEY,  
*Their Attorney and Solicitor.*

H. WINSHIP WHEATLEY,  
*Sol. for Intervenors.*

DISTRICT OF COLUMBIA, ss:

I, H. Winship Wheatley, being first duly sworn on oath deposes and says that he is the attorney for the Intervenors in the above entitled petition, and that he has authority from them to sign their name- -hereto. That he knows the contents of said petition  
18 and the facts therein stated upon personal knowledge are true, and those stated upon information and belief, he believes to be true.

H. WINSHIP WHEATLEY.

Subscribed and sworn to before me this 18th day of September, 1908.

J. R. YOUNG, *Clerk,*  
By F. W. SMITH, *Asst. Clerk.*

*Intervening Petition.*

Filed September 18, 1908.

\* \* \* \* \*

The intervening petition of Harry Hamburger and Philip Hamburger, Jr., co-partners trading as the Hambro Distilling & Distributing Company; and of the Italian Swiss Colony, a corporation, respectfully shows to the Court as follows:

1st. Your complainants, Harry Hamburger, and Philip Hamburger, Jr. are citizens of the State of Maryland and residents of the City of Baltimore, and file this petition as a judgment creditor of the defendant, Patrick E. Daly, as hereinafter set forth, and the defendant, Italian Swiss Colony, a corporation under the laws of the State of —, and also intervenes in this cause as a judgment creditor of the said Patrick E. Daly, as hereinafter set forth.

2nd. The defendants, Patrick E. Daly, Alexander H.  
19 Bell, Clarence Walmsley, Frank P. Madigan and Philip Schwartz are residents of the District of Columbia, the defendants George J. Records and Harry P. Goldsborough are resi-



dents of the City of Baltimore, State of Maryland; all of the said defendants are citizens of the United States, the defendant Patrick E. Daly is sued in his own right; the defendants Bell, Walmsley and Madigan are sued as trustees under the deeds of trust hereinafter mentioned, and the defendants Schwartz, Records and Goldsborough are sued as the beneficiaries under the said deeds of trust.

3rd. That your complainants Harry and Philip Hamburger, co-partners trading as The Hambro Distilling & Distributing Company, recovered a judgment on the 16th day of September, 1908 against the defendant Patrick E. Daly, in law cause number 50864 of this Honorable Court, for the sum of \$638.58 and interest on \$600.00 from January 22nd, 1908 at the rate of six per cent per annum, and costs of suit upon which a writ of fieri facias was issued on the 16th day of September, 1908 and returned "nulla bona" by the United States Marshal, for said District, all of which will more fully appear upon reference to a short copy of said judgment filed herewith, and marked "Exhibit A," to which your complainants refer, and pray to be read as a part hereof at the final or any other hearing in this cause, and said judgment remains wholly unsatisfied.

4th. That the said Patrick E. Daly in addition to the indebtedness due your complainants, Harry Hamburger and Philip Hamburger, Jr., co-partners trading as Hambro Distilling & Distributing Company, and evidenced by a judgment as herein  
20 set forth, is indebted to the said Harry Hamburger and Philip Hamburger, Jr., co-partners trading as Hambro Distilling & Distributing Company, in the sum of \$237.22, and interest thereon from January 22nd, 1908, the same being evidenced by two promissory notes, dated on said January 22nd, 1908, and payable to the Hambro Distilling & Distributing Company, meaning the said Harry Hamburger and Philip Hamburger, Jr., one of which notes was for the sum of \$100 payable seven months after date and the other for the sum of \$137 payable eight months after date. Your complainants have no security for same, and by reason of the filing of the bill of complaint and appointment of receivers herein and the facts hereinafter stated, claim, allege and aver, that they have a lien on the said property named therein for the payment of this sum.

5th. That the said defendant, Patrick E. Daly has no property real or personal, so far as your complainant- *has* been able to ascertain, which is subject to execution at law. The said defendant Daly is, however, the owner of an equitable interest in and to certain goods, chattels and personal property hereinafter set forth and described.

6th. That for the past three years or more the said defendant Daly has been engaged in conducting a restaurant and retail liquor business in premises numbered 1126 Seventh Street, Northwest, in the City of Washington, District of Columbia; and is the owner of certain bar fixtures and paraphernalia of trade used by him in the conduct of such business, as also of a stock of wines, liquors, cigars  
21 and tobacco used in said business, as also a license for the sale of liquor at retail in said premises, and a lease of said premises from the owner thereof for a term unknown to your complainants.

7th. That the said defendant Daly being possessed of the above mentioned personal property, license and lease, by a deed of trust dated August 29th, 1907, and duly recorded among the Land Records of the District of Columbia, on said date, in liber numbered 3099 at folio 133 et sequitur, did convey, the same to the defendants Bell and Walmsley in trust to secure an indebtedness to the defendants George J. Records, and Harry P. Goldsborough, co-partners trading under the firm name of Records and Goldsborough, in the sum of fifteen hundred dollars (\$1,500) represented by fifteen (15) promissory notes for the sum of one hundred dollars (\$100) each, dated August 29th, 1907 and payable monthly in from one to fifteen months after date, to the order of said Records and Goldsborough, with interest at the rate of 5% per annum, all of which will more fully appear upon reference to said deed of trust recorded as aforesaid, the record of which your complainant prays leave to read as part hereof at the final or any other hearing of this cause. Your complainants are not advised as to how much, if anything is due or unpaid of the indebtedness secured by said deed of trust, and call upon the defendants Daly, Records & Goldsborough to make discovery, in their answer hereto, as to the amount, if any, that is still due and unpaid upon the several notes secured thereby.

8th. That thereafter, the said defendant Daly being liable as endorser to the defendant Philip Schwartz upon a certain promissory note, for the sum of \$2,000 executed by one Pierre Bonsieigneur to the order of said Daly, dated October 21, 1907, and payable on demand with 6% interest, the endorsement of the said Daly thereon being for the accommodation of the said Bonseigneur, did convey the property mentioned in the preceding paragraph, by deed of trust to secure the payment of said note, said trust being dated October 21, 1907, and recorded on the same day in liber numbered 3092 at folio 372 of the land records, all of which will more fully appear upon reference to said deed of trust recorded as aforesaid, the record of which your complainants pray leave to read as part hereof at the final or any other hearing of this cause. Your complainants are not advised as to how much, if anything, is due and unpaid of the indebtedness secured by said deed of trust, and calls upon the defendants Schwartz and Daly to make discovery in their answer hereto, as to the amount, if any, that is still due and unpaid upon said note. Complainants are further informed and believe, and upon such information and belief, aver that the said promissory note of the said Bonseigneur and so as aforesaid secured by said deed of trust is as to the defendant Daly a collateral security, the same being primarily secured by a certain deed of trust, dated October 21st, 1907 and recorded on the same day in liber numbered 3092. at folio 370 et sequitur of the said land records, executed by said Bonseigneur and wife, to the defendants Bell & Madigan, and conveying certain personal property in premises numbered 1311 "E" Street Northwest, in said City and District, therein described, and a license for the sale of liquor at retail in said premises issued to the said Bonsieigneur, all of which will more fully appear upon reference to said deed of trust recorded as aforesaid, the record of which your complainants pray leave to read as



part hereof at the final or any other hearing of this cause; that the said defendant Daly is entitled to have payment of said promissory note enforced against the security so as aforesaid given by said Bon-sieigneur and such security exhausted before payment thereof is enforced under the deed of trust executed by the defendant Daly, against the property of said defendant Daly from which complainants seek satisfaction of their said judgments.

9th. That said complainants are informed and believe and upon such information and belief allege it is a fact that the ownership of a license for the sale of liquor at retail in the District of Columbia, constitutes a franchise of great value, which is due to the fact that few, if any new licenses are issued and to the further fact that when once issued the same have a high and ready market; that the license owned by the defendant Daly, together with the lease to him of the premises aforesaid constitute the most valuable portion of the assets of the said defendant Daly, that the bar fixtures and stock in trade hereinbefore referred to are not worth independently of said license more than the sum of \$500, but that in conjunction with said lease and license constitute a going retail liquor business of the value of at least \$5,000. That unless said fixtures, lease, license and stock in trade are sold as a going business, complainants' judgments will be utterly lost.

10th. That up until the appointment of a receiver in this cause the said defendant, Patrick E. Daly, was in possession of said  
24 goods and chattels, and using the same in conducting the said business and by the use thereof the same was daily depreciating in value and being dissipated, and that the said retail liquor license expires on November 1st, 1908, subject to renewal for the term of one year upon the payment of \$800, and is therefore daily depreciating in value and must be speedily sold if complainants are to realize anything therefrom. That, in view of the conditions, above set forth, it is necessary that a receiver or receivers should be appointed pending this cause, to take possession and charge of the said goods, chattels, license, and lease, and hold the same subject to the order of this Honorable Court, or that the receiver now in charge be continued, and directed to sell, at public auction, or otherwise.

11th. That your complainants are informed and believe and upon such information and belief aver that under the license system and procedure in force in this District in the event of the transfer of a liquor license it is necessary to file such license or certificate evidencing the same with the Clerk of the Excise Board of the said District, with the endorsement thereon of the licensee or his attorneys, thereto, properly authorized, whereupon, unless cause to the contrary be shown, such license is transferred and the fact of such transfer is endorsed upon the face of such certificate; that such transfer will not be granted unless such certificate is deposited as aforesaid, nor will, under the circumstances of this case, a duplicate of such license certificate be issued, that therefore it is necessary that the receiver  
25 or receivers should have physical possession of said license certificate,

Wherefore your petitioners pray

1st. That they may be admitted as parties complainant herein.

2nd. That a United States writ of subpœna, issue out of this Honorable Court requiring all of the other parties to this suit to appear and answer the exigencies of this bill.

3rd. That a receiver or receivers be appointed pending this cause to take possession of said goods, chattels, personal property, rights, licenses and lease, with authority to demand of the defendant Daly the delivery to said receiver or receivers of the license or certificate mentioned herein, and the lease for said premises, or that the receiver heretofore appointed may be so empowered and directed to advertise for sale, and that upon the failure of the said Daly to deliver the same to said receiver or receivers, that the court use its powers to punish for contempt in failing so to do.

4th. That said receiver be authorized and directed to sell immediately at public auction, or otherwise, the said goods, chattels personal property, rights, licenses, privileges, and lease.

5th. That the defendant Schwartz and the trustees acting under said trust to secure him, be compelled to first exhaust their remedies against any other security which may be held by them for their debt, and other remedies against the said Pierre Bonsieigneur prior to obtaining anything from this case, and towards this end  
26 that all necessary injunctions and restraining orders, both preliminary and final, be issued.

6th. That all proper and necessary rules to show cause in the premises be laid and served upon said defendant Daly and particularly that a rule to show cause be issued and served upon him why a receiver or receivers should not be appointed to take charge of said goods, chattels and why he should not be required to deliver up said license and lease to said receiver.

7th. That after the sale of said goods, chattels, personal property, licenses, and lease by the receiver as hereinabove set forth or whatever sold, that the proceeds, after paying all prior legal liens, be applied to the satisfaction of the claims of these intervenors.

8th. That pending these proceedings the defendant Daly be enjoined and restrained from selling, removing or in any manner interfering with said goods, chattels and personal property, license and lease, or any part thereof.

9th. That all necessary orders and references for an accounting be made and had.

10th. That your complainant- have such other and further relief as the nature of the case may require.

HARRY HAMBURGER AND  
PHILIP HAMBURGER,

*Co-partners Trading as Hambro Distilling  
& Distributing Co.,*

By H. WINSHIP WHEATLEY,  
*Their Attorney and Solicitor.*

ITALIAN SWISS COLONY,  
By H. WINSHIP WHEATLEY,  
*Their Attorney and Solicitor.*

H. WINSHIP WHEATLEY,  
*Sol. for Intervenors.*



27 DISTRICT OF COLUMBIA, ss:

I, H. Winship Wheatley being first duly sworn on oath deposes and says that he is the attorney for the intervenors in the above entitled petition, and that he has authority from them to sign their name-hereto. That he knows the contents of said petition and the facts therein stated upon personal knowledge are true, and those stated upon information and belief, he believes to be true.

H. WINSHIP WHEATLEY.

Subscribed and sworn to before me this 18th day of September, 1908.

J. R. YOUNG, *Clerk*,  
By F. W. SMITH, *Ass't Clerk*.

28 *Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 50864.

HARRY and PHILLIP HAMBURGER, JR., Trading as Hambro Distilling  
& Distributing Company, Plaintiffs,

vs.

PATRICK E. DALY, Defendant.

1908, Sept. 16.—Judgment for pl'f for.....	\$639.58
with interest on \$600.00 from Jan'y 22,	
1908.	
Cost of Protest .....	
[SEAL.] Costs of Suit .....	20.20
" add'l to Satisfy.....	.40
Less credit, of \$— paid.....	

1908, Sept. 16.—Fi. Fa., issued.

“ “ 17.—“ “ returned Nulla bona.

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
By H. BINGHAM, *Ass't Clerk*.

Sept. 17, 1908.

*Short Copy of Judgment.*

Filed Sep. 16, 1908—Robert H. Terrell, Justice of the Peace.

In Justice's Court of the District of Columbia.

Sub-District No. 6.

No. 15051.

ITALIAN SWISS COLONY, a Corporation, Plaintiff,

vs.

PATRICK E. DALY, Defendant.

July 13, 1908.—Judgment for plaintiff.....	\$23.15
Costs of suit .....	1.85
Attachment on judgment.....	2.60
Fieri Facias, Nulla Bona.....	1.10
Cost of Copy .....	.50
Total.....	\$———

Given under my hand and seal this 16 day of September, A. D. 1908.

SAM'L C. MILLS, J. P., [SEAL.]

Justice of the Peace, *Acting for R. H. Terrell.*

(Endorsed:) Sept. 18, 1908. Leave of Court is granted to intervene. Let this petition be filed. Ashley M. Gould, Justice.

*Subpœna to Answer.*

Issued September 18, 1908.

\* \* \* \* \*

The President of the United States to Geo. J. Records, Patrick E. Daly, Alexander H. Bell, Clarence Walmsley, Harry P. Goldsborough, Frank P. Madigan, Philip Schwartz, Defendants:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of the Intervening Petition, under pain of attachment, and such other process of contempt as the Court shall award.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, the 18th day of Sept., A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk,*  
By F. W. SMITH,  
*Assistant Clerk.*

MEMORANDUM.—That the defendant-, herewith served, is to enter their appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.



*Marshal's Return.*

Returned Sept. 25, 1908.

Summoned defendants as follows:

31 George J. Records and Harry P. Goldsborough by serving copy on A. H. Bell, Attorney.

Alexander H. Bell, personally, Sept. 21, 1908.

Frank P. Madigan, personally, Sept. 19, 1908.

Patrick E. Daly, personally, Sept. 22, 1908.

Philip Schwartz, personally, Sept. 23, 1908.

Clarence Walmsley, personally, Sept. 24, 1908.

AULICK PALMER, *Marshal*.  
H.

*Order Authorizing Receiver to Accept Offer for Business.*

Filed September 28, 1908.

\* \* \* \* \*

Upon consideration of the report of John A. Barnes, Receiver, filed herein, that he has received an offer for the license, lease, stock and fixtures of the bar room business of the defendant Daly, at premises 1126 Seventh Street, Northwest, in the sum of four thousand dollars (\$4,000.00) cash from J. J. Wholihan and all parties hereto consenting, it is by the Court, this 28<sup>th</sup> day of September,

32 A. D. 1908, adjudged, ordered and decreed that the said Receiver accept the said offer, and he is hereby authorized and directed upon payment of the said purchase money to convey and transfer said property to the said purchaser.

HARRY M. CLABAUGH,  
*Chief Justice.*

We consent.

LEON TOBRINER,

*Sol'r for Compl't.*

ALEXANDER H. BELL,

*For all Defendants.*

H. WINSHIP WHEATLEY,

*Sol. for Intervenors.*

*Intervening Petition of Wilson Catherwood and Magnis H. Brown.*

Filed October 9, 1908.

\* \* \* \* \*

The intervening petition of Wilson Catherwood and Magnis H. Brown, co-partners and trading under the name of H. & H. W. Catherwood, respectfully shows:

1. That your complainants, Wilson Catherwood and Magnis H. Brown, are citizens of the United States and residents of the City of

Philadelphia in the State of Pennsylvania, and file this petition as a judgment creditor of the defendant, Patrick E. Daly, as hereinafter set forth.

2. That the defendants Patrick E. Daly, Alexander H. Bell, Frank P. Madigan and Philip Schwartz, are citizens of the United States and residents of the District of Columbia; that the defendants  
33 Clarence Walmsley, George J. Records and Harry P. Goldsborough, are citizens of the United States and residents of the City of Baltimore in the State of Maryland; and that the defendant Patrick E. Daly is sued in his own right, the defendants Bell, Walmsley and Madigan, as trustees under certain deeds of trust, as will more fully appear by reference to the original bill of complaint herein filed, and the defendants Schwartz, Records and Goldsborough, as the beneficiaries under the said deeds of trust.

3. That your complainants, Wilson Catherwood and Magnis H. Brown, co-partners, trading under the name of H. & H. W. Catherwood, on the 1st day of September A. D., 1908, recovered a judgment against the defendant Patrick E. Daly before Justice of the Peace, Robert H. Terrell, for the sum of One hundred and eighty-one dollars (\$181.00), with interest from the first day of September A. D., 1908 at the rate of six per cent per annum and costs of suit, upon which execution was issued on the sixth day of October A. D. 1908 and returned, "No personal property found whereon to levy"; that a certified copy of said judgment was filed in the Clerk's office of the Supreme Court of the District of Columbia on the sixth day of October A. D. 1908 and therein docketed in the docket of law causes No. 50,990; that thereupon a writ of fieri facias was issued from said Supreme Court on the sixth day of October A. D. 1908 and returned "nulla bona," all of which will more fully appear upon reference to the short copy of the judgment hereto annexed; and that said judgment remains wholly unsatisfied.

4. That the said defendant, Patrick E. Daly, has no property, real or personal, so far as your complainants have been able to  
34 ascertain, which is subject to execution at law. The said defendant Daly is however the owner of an equitable interest in and to certain goods, chattels and personal property, as will more fully appear upon reference to said original bill of complaint herein filed.

Petitioners aver that by reason of the premises they are entitled to be made a party complainant to this cause so that their judgment may be fully enforced and their rights thereunder be protected by the final decree herein.

Wherefore the petitioners pray:

1. That they may be made parties complainant hereto.  
2. That a writ of subpœna may issue out of this Court requiring all of the other parties to this suit to appear and answer the exigencies of this bill.

3. That the petitioners' rights in the premises be fully protected and that they have the same relief in this cause as if they had originally been complainants in the bill herein filed.

4. That the petitioners may have such other and further relief



as the nature of the case may require and to the Court appear meet and proper.

WILSON CATHERWOOD,  
MAGNUS H. BROWN,  
By F. L. GRAHAM, *Ag't.*

35 DISTRICT OF COLUMBIA, ss:

I, F. L. Graham, on oath depose and say, that I am the agent of the petitioners named in the above entitled petition and that I have authority from them to sign their names hereto; that I have heard read the foregoing petition by me subscribed and know the contents thereof; that the statements therein made of my own personal knowledge are true and those made upon information and belief, I believe to be true.

F. L. GRAHAM.

Subscribed and sworn to before me this 8th day of October A. D., 1908.

[SEAL.]

WILLIAM F. POWELL,  
*Notary Public, D. C.*

36

*Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 50990.

WILSON CATHERWOOD and MAGNUS H. BROWN, Trading as H. & H.  
W. CATHERWOOD, Plaintiffs,  
vs.  
PATRICK E. DALY, Defendant.

1908, Sept.	1.—Judgment for Pl'ff for.....	\$181.00
	with interest from date.	
	Cost of Protest .....	
[SEAL.]	Costs of Suit .....	8.45
	“ add'l to Satisfy.....	.40
	Less credit, of \$— paid.....	

1908, Oct. 6.—Fi. Fa., issued.

“ “ “ “ “ returned Nulla bona.

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
By ALF. G. BUHRMAN,  
*Ass't Clerk.*

Oct. 8, 1908.

37

*Order for Leave to Intervene.*

Filed October 9, 1908.

\* \* \* \* \*

Upon consideration of the petition of Wilson Catherwood and Magnis H. Brown, co-partners and trading under the name of H. & H. W. Catherwood, It is by the Court this 9th day of October, A. D., 1908, ordered, that the said Wilson Catherwood and Magnis H. Brown, co-partners and trading under the name of H. & H. W. Catherwood, be and they hereby are given leave of the Court to intervene in this cause and to be made parties complainant hereto.

By the Court.

WRIGHT, *Justice.**Subpœna to Answer.*

Issued October 9, 1908.

\* \* \* \* \*

The President of the United States to Alexander H. Bell, Defendant:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of the intervening petition of H. & H. W. Catherwood, under  
 38 pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 9th day of Oct., A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk,*  
 By F. E. CUNNINGHAM,  
*Assistant Clerk.*

MEMORANDUM.—That the defendant, herewith served, is to enter — appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

*Marshal's Return.*

Returned Nov. 5, 1908.

Not served because Marshal's fee not paid.

Nov. 3, 1908.

AULICK PALMER, *Marshal.*  
 H.

MEMO.—Alias subpœna to answer, issued Jan. 19, 1909, returned Jan. 29, 1909. Service accepted.

ALEXANDER H. BELL,  
*Att'y for Patrick E. Daly.*



*Petition of Meyer Pitts and Co. for Leave to Intervene, &c.*

Filed October 22, 1908.

\* \* \* \* \*

To the Honorable, the Justice of said Court:

The petition of Ferdinand Meyer and R. Walter Graham, respectfully represents:

1. That they are co-partners trading under the firm name  
39 and style of Meyer Pitts & Co., and reside in Baltimore, State of Maryland.

2. That heretofore, to wit, on the second (2) day of May, 1908, your petitioners recovered a judgment before Robert H. Terrell one of the Justices of the Peace in and for the District of Columbia, in Cause No. 14,179, against the defendant Patrick E. Daly, for the sum of one hundred and thirty-six and thirty hundredths dollars (\$136.30) with interest on \$66.94 from February 8, 1908 and on \$69.36 from April 8, 1908, with \$1.85 costs of suit, less credit of \$19.63, and since said date petitioners have expended \$3.70 for additional costs, upon which judgment a writ of fieri facias was on May 11, 1908 duly issued directed to the United States Marshal in and for said District, who, on the 4th day of June, 1908, returned the same "No personal property found from whereon to levy." That thereafter your petitioners on the 22nd day of October, A. D. 1908, docketed said judgment in the Supreme Court of the District of Columbia, in Law Cause #51,040, and on said date a writ of fieri facias was issued on said judgment by said Supreme Court of the District of Columbia, directed to the United States Marshal for said District, who on said date returned the same "Nulla Bona" all of which more fully appears upon reference to a short copy of said judgment hereto attached marked "Exhibit M. P. No. 1." And your petitioners aver that the said defendant has no property of whatever character in the District of Columbia subject to execution at law.

3. Your petitioners adopt and reiterate the allegations contained  
40 in the fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of the original bill filed herein, and pray that the same may be considered as part hereof to the same effect as if such allegations had been set forth at large herein.

The premises considered your petitioners pray:

1. That they be permitted to intervene as parties complainant herein.

2. That the defendant be required to answer this petition, and for that purpose process issue herein requiring him to make such answer.

3. That petitioner have such other and further relief in the premises as to the Court may seem meet and proper.

MEYER, PITTS & CO.,  
By BYRON U. GRAHAM, *Attorney.*

LEON TOBRINER,  
BYRON U. GRAHAM,  
*Solicitors.*

I, Byron U. Graham on my oath do depose and say that I am attorney for the firm of Meyer Pitts & Co., and have heard read the foregoing petition by me subscribed as such that the statements therein made of my personal knowledge are true and those made upon information and belief, I believe to be true.

BYRON U. GRAHAM.

Subscribed and sworn to before me this 22 day of October, 1908.

J. R. YOUNG, *Cl'k*,  
By F. E. CUNNINGHAM,  
*Ass't Cl'k*.

40½

*Short Copy.*

"EXHIBIT M. P. No. 1."

Filed Oct. 22, 1908. J. R. Young, Clerk.

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 51040.

FERDINAND MEYER and R. WALTER GRAHAM, Trading as Meyer,  
Pitts & Co., Plaintiffs,

vs.

PATRICK E. DALY, Defendant.

1908, May 2.—Judgment for pl'f for.....	\$136.30
With interest on \$66.94 from Feb. 8, 1908, & on \$69.36 from April 8, 1908.	
Cost of Protest .....	
Costs of Suit .....	10.55
" add'l to Satisfy .....	.40
Less credit, of \$19.63 paid May 26, '08....	

1908, Oct. 22.—Fi. Fa., issued.

    " " " " " returned Nulla bona.

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
By H. BINGHAM, *Ass't Clerk*.

Oct. 22, 1908.

41 *Petition of S. Grabfelder & Co. for Leave to Intervene, etc.*

Filed October 22, 1908.

\* \* \* \* \*

To the Honorable the Justice of said Court:

The petition of S. Grabfelder & Co., Incorporated, respectfully represents:

1. That it is a corporation duly formed and created under and by virtue of the laws of the State of West Virginia.



2. That heretofore, to wit, on the fifth (5) day of May, A. D. 1908, your petitioner recovered a judgment before Robert H. Terrell, one of the Justices of the Peace in and for the District of Columbia, in Cause No. 14,287, against the defendant Patrick E. Daly, for the sum of two hundred and forty four and eighteen hundredths dollars (\$244.18) with interest on \$74.59 from January 15, 1908, and on \$159.59 from February 15, 1908, with \$1.85 costs of suit, and since said date petitioner has expended \$1.60 for a writ of fieri facias and a certified copy of said judgment, upon which judgment a writ of fieri facias was on September 12, 1908 duly issued directed to the United States Marshal in and for said District, who, on the 14th day of September, 1908, returned the same "No personal property found whereon to levy." That thereafter your petitioner on the 22nd day of October, A. D. 1908, docketed said judgment in the Supreme

42 Court of the District of Columbia in Law Cause #51,043 and on said date a writ of fieri facias was issued on said judgment by said Supreme Court of the District of Columbia, directed to the United States Marshal for said District, who, on said date, returned the same "Nulla Bona" all of which will more fully appear upon reference to a short copy of said judgment hereto attached marked "Exhibit S. G. No. 1." And your petitioner avers that the said defendant has no property of whatever character in the District of Columbia subject to execution at law.

3. Your petitioner adopts and reiterates the allegations contained in the fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of the original bill filed herein, and prays that the same may be considered as part hereof to the same effect as if such allegations had been set forth at large herein.

The premises considered, your petitioner prays:

1. That it may be permitted to intervene herein and be made a party complainant.

2. That the defendant be required to answer this petition and for that purpose process issue herein requiring him to make such answer.

3. That petitioner have such other and further relief in the premises as to the Court may seem meet and proper.

S. GRABFELDER & CO., INC.,  
By BYRON U. GRAHAM, *Attorney.*

LEON TOBRINER,  
BYRON U. GRAHAM,  
*Solicitors.*

43 I, Byron U. Graham, on my oath do depose and say that I am the attorney for S. Grabfelder & Co., Inc., and that I have heard read the foregoing petition by me subscribed as such and know the contents thereof; that the statement- therein made of my personal knowledge are true and those made upon information and belief I believe to be true.

BYRON U. GRAHAM.

Subscribed and sworn to before me this 22nd day of October, A. D. 1908.

J. R. YOUNG, *Cl'k.*  
By F. E. CUNNINGHAM,  
*Ass't Cl'k.*

*Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 51043.

S. GRABFELLON & Co., Inc., Plaintiff,  
 vs.  
 PATRICK E. DALY, Defendant.

1908, May 5.—Judgment for pl'f for.....	\$244.18
with interest.	
Cost of Protest .....	
[SEAL.] Costs of Suit .....	8.45
“ add'l to Satisfy .....	.40
Less credit, of \$— paid.....	

1908, Oct. 22.—Fi. Fa., issued.

“ “ “ “ “ returned Nulla bona.

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
 By H. BINGHAM, *Ass't Clerk*.

Oct. 22, 1908.

45 *Petition of Chr. Heurich Brewing Co. for Leave to Intervene.*

Filed October 22, 1908.

\* \* \* \* \*

To the Honorable the Justice of said Court:

The petition of the Chr. Heurich Brewing Company respectfully represents:

1. That it is a corporation duly formed and existing under and by virtue of the laws of the State of Virginia.

2. That heretofore, to wit, on the 22nd day of September, 1908, your petitioner recovered a judgment before Robert H. Terrell one of the Justices of the Peace in and for the District of Columbia, in Cause No. 15,792, against the defendant, Patrick E. Daly, for the sum of two hundred and thirty-seven and sixty-two hundredths dollars (\$237.62), with interest on \$200.00 from March 18, 1907 and on \$37.62 from September 22, 1908, with \$1.85 costs of suit, and since said date petitioner has expended \$1.60 for a writ of fieri facias and a certified copy of said judgment, upon which judgment a writ of fieri facias was on September 30, 1908 duly issued directed to the United States Marshal in and for said District who, on the



30th day of September, 1908, returned the same "no personal property found whereon to levy." That thereafter your petitioner on the 22nd day of October 1908, docketed said judgment in the Supreme Court of the District of Columbia in law cause No. 46 51,041 and on said date a writ of fieri facias was issued on said judgment directed to the United States Marshal in and for said District who on said date returned the same "nulla bona," all of which will more fully appear on reference to a short copy of said judgment hereto annexed marked "Exhibit C. H. No. 1." And your petitioner avers that the said defendant has no property of whatever character in the District of Columbia subject to execution at law.

3. Your petitioner adopts and reiterates the allegations contained in the fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of the original bill filed herein, and prays that the same may be considered as part hereof to the same effect as if such allegations had been set forth at large herein.

The premises considered your petitioner prays:

1. That it be permitted to intervene herein and be made a party complainant.

2. That the defendant be required to answer this petition and for that purpose process issue herein requiring him to make such answer.

3. That petitioner have such other and further relief in the premises as to the Court may seem meet and proper.

CHR. HEURICH BREWING CO.,  
By BYRON U. GRAHAM, *Attorney.*

LEON TOBRINER,  
BYRON U. GRAHAM,  
*Solicitors.*

47 I, Byron U. Graham, on my oath do depose and say that I am one of the attorneys for the petitioner and have read the foregoing petition by me subscribed and know the contents thereof; that the statements therein made of my personal knowledge are true and those made upon information and belief, I believe to be true.

BYRON U. GRAHAM.

Subscribed and sworn to before me this 22 day of October, 1908.

J. R. YOUNG, *Clk*,  
By F. E. CUNNINGHAM,  
*Ass't Clk.*

*Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 51041.

CHR. HEURICH BREWING COMPANY, INC., Plaintiff,

vs.

PATRICK E. DALY, Defendant.

1908, Sept. 22.—Judgment pl'f for .....	\$237.62
with interest on \$200.00 from March	
18, 1907, and on \$37.62 from Sept.	
22, 1908.	
Cost of Protest .....	
[SEAL.] Costs of Suit .....	8.45
" add'l to Satisfy.....	.40
Less credit, of \$— paid.....	

1908, Oct. 22.—Fi. Fa., issued.

    " " " " " returned Nulla bona.

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
By H. BINGHAM, *Ass't Clerk*.

Oct. 22, 1908.

49 *Petition of Daniel Loughran for Leave to Intervene, etc.*

Filed October 22, 1908.

\* \* \* \* \*

To the Honorable the Justice of said Court:

The petition of Daniel Loughran respectfully represents:

1. That he is a citizen of the United States and a resident of the District of Columbia and conducts business therein.

2. That heretofore, to wit, on the 16th day of September, 1908, your petitioner recovered a judgment before Robert H. Terrell, one of the Justices of the Peace in and for the District of Columbia, in Cause No. 15,796 against the defendant, Patrick E. Daly, for the sum of seventy-eight and twenty-five hundredths dollars (\$78.25), with interest from April 6, 1908, with \$1.60 costs of suit, and since said date petitioner has expended \$1.60 for a writ of fieri facias and a certified copy of said judgment, upon which judgment a writ of fieri facias was on September 28, 1908 duly issued directed to the United States Marshal in and for said District who, on the 28th day of September, 1908, returned the same "no personal property found whereon to levy." That thereafter your petitioner on the 22nd day of October, 1908 docketed said judgment in the Supreme Court of the District of Columbia in law cause No. 51,042 and on



said date a writ of fieri facias was issued on said judgment directed to the United States Marshal in and for said District who on  
50 said date returned the same "nulla bona," all of which will more fully appear on reference to a short copy of said judgment hereto annexed marked Exhibit D. L. No. 1. And your petitioner avers that the said defendant has no property of whatsoever character in the District of Columbia subject to execution at law.

3. Your petitioner adopts and reiterates the allegations contained in the fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of the original bill filed herein and prays that the same may be considered as part hereof to the same effect as if such allegations had been set forth at large herein.

The premises considered, petitioner prays:

1. That he be permitted to intervene herein and be made a party complainant.

2. That the defendant be required to answer this petition, and for that purpose process issue requiring him to make such answer.

3. That petitioner have such other and further relief in the premises as to the Court may seem meet and proper.

DANIEL LOUGHRAN,

By BYRON U. GRAHAM, *Attorney.*

LEON TOBRINER,

BYRON U. GRAHAM,

*Solicitors.*

51 I, Byron U. Graham on my oath do depose and say that I am the attorney for the petitioner and have read the foregoing petition by me subscribed and know the contents thereof; that the statements therein made of my personal knowledge are true and those made upon information and belief I believe to be true.

BYRON U. GRAHAM.

Subscribed and sworn to before me this 22 day of October, 1908.

J. R. YOUNG, *Cl'k.*,

By F. E. CUNNINGHAM,

*Ass't Cl'k.*

52 "EXHIBIT D. L. No. 1."

*Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 51042.

DANIEL LOUGHRAN, Plaintiff,

vs.

PATRICK E. DALY, Defendant.

1908, Sept. 16.—Judgment for pl'f for..... \$78.25  
with interest from Apr. 6, '08.

Cost of Protest .....

[SEAL.] Costs of Suit ..... 8.20

" add'l to Satisfy..... .40

Less credit, of \$— paid.....

1908, Oct. 22.—Fi. Fa., issued.

“ “ “ “ “ returned Nulla bona.

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
By H. BINGHAM, *Ass't Clerk*.

Oct. 22, 1908.

53 *Order Granting Leave to Daniel Loughran et al. to Intervene.*

Filed October 22, 1908.

\* \* \* \* \*

Upon consideration of the petitions of Daniel Loughran, The Chr. Heurich Brewing Company and S. Grabfelder & Co., Inc., and Ferdinand Meyer and R. Walter Graham, co-partners trading as Meyer, Pitts & Co., filed herein, it is, by the Court, this 22d day of October, adjudged, ordered and decreed that the said Daniel Loughran, The Chr. Heurich Brewing Company, S. Grabfelder & Co., Inc., and Ferdinand Meyer and R. Walter Graham, trading as Meyer Pitts & Co., be and they are hereby granted leave to intervene herein and become parties complainant to these proceedings.

JOB BARNARD, *Justice*.

*Subpœna to Answer.*

Issued October 22, 1908.

\* \* \* \* \*

The President of the United States to Patrick E. Daly, Defendant:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna,  
54 exclusive of Sundays and legal holidays, and answer the exigency of the intervening petition of Daniel Loughran, under pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 22d day of October, A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk*,  
By F. E. CUNNINGHAM,  
*Assistant Clerk*.

MEMORANDUM.—That the defendant, herewith served, is to enter — appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed:) Oct. 23/08. Service accepted. Alexander H. Bell,  
Att'y for Patrick E. Daly.



*Intervening Petition of Arlington Brewing Company.*

Filed October 26, 1908.

\* \* \* \* \*

To the Supreme Court of the District of Columbia, holding an Equity Court:

The petition of Arlington Brewing Company shows as follows:

1. This petitioner is a corporation duly created, organized  
55 and existing as such under and by virtue of the laws of the State of Virginia.

2. Heretofore, to wit, on the 31st day of August, A. D. 1908, this petitioner, before Robert H. Terrell, Esq., one of the Justices of the Peace in and for the District of Columbia, recovered a certain judgment against Patrick E. Daly, who is named as one of the defendants in the above entitled cause, for the sum of \$272.50 with interest on \$50. from April 15, 1908, and on \$222.50 from August 31, 1908, together with costs now amounting to \$8.45, upon which judgment a writ of fieri facias was duly issued and was by the United States Marshal for said District duly returned as follows: "No personal property found whereon to levy." Thereafter, to wit, on the 1st day of October, A. D. 1908, the said judgment was duly docketed in the docket of law causes in the Clerk's Office of the Supreme Court of the District of Columbia, and therein numbered 50,979, At Law, and thereupon on the same day, in said court, a writ of fieri facias was issued on said judgment to the said Marshal, which said judgment remains unsatisfied, all of which will more fully appear upon reference to a short copy of said judgment marked Exhibit A. B. Co., No. 1, herewith filed and made part of this petition.

3. And heretofore, to wit, on the 31st day of August, A. D. 1908, this petitioner, before Robert H. Terrell, Esq., one of the Justices of the Peace in and for the District of Columbia, recovered a certain other judgment against the said Patrick E. Daly, for the sum of \$300. with interest from August 31, 1908, together with costs now  
56 amounting to \$8.45, upon which judgment a writ of fieri facias was duly issued and was by the United States Marshal for said District duly returned as follows: "No personal property found whereon to levy." Thereafter, to wit, on the 1st day of October, A. D. 1908, the said judgment was duly docketed in the Docket of law causes in the Clerk's Office of the Supreme Court of the District of Columbia and therein numbered 50,980, at Law, and thereupon, on the same day, in said court, a writ of fieri facias was issued on said judgment to the said Marshal, which said judgment remains unsatisfied, all of which will more fully appear upon reference to a short copy of said judgment marked Exhibit A. B. Co. No. 2, herewith filed and made part of this petition.

4. This petitioner is informed and believes and so avers that the said Daly has no property in the District of Columbia subject to execution at law.

5. This petitioner adopts and reiterates all the statements con-

tained in the paragraphs numbered respectively 2, 4, 5, 6, 7, 8, 9 and 10 of the original bill of complaint of Edward H. Wyvill filed in the above entitled cause and prays that said statements be read and considered as part of this petition to the same effect as if set forth at large herein, excepting this, that by proceedings had in said cause the business, license, lease and other property mentioned in said paragraphs 5, 6, 7, 8, 9 and 10 of said bill, have been placed in the hands of a receiver who holds the same subject to the order of this Court. This petitioner desires to intervene as a complainant in said cause and hereby offers to bear a reasonable and ratable share of the costs therein.

57        6. This petitioner, by reason of the premises, claims and seeks by this petition to enforce, a lien upon the business, license, lease and other property aforesaid and upon the proceeds of any sale thereof made or to be made in said proceedings.

Wherefore this petitioner prays as follows:

1. That this petitioner be permitted to intervene as a party complainant in said cause.

2. That the said Patrick E. Daly and also Alexander H. Bell, Clarence Walmsley, George J. Records, Harry P. Goldsborough, Frank P. Madigan and Philip Schwartz, who are named in said original bill as defendants in said cause, and who are hereby named as defendants in this petition, be required by process of this court to appear and answer this petition.

3. That the relief prayed in the prayers numbered respectively 2, 3, 5, and 6 of said original bill be granted and that the business, license, lease and other property and rights therein mentioned be sold and the proceeds of such sale or so much thereof as may be requisite, be applied to the satisfaction of the judgments recovered by this petitioner as aforesaid.

4. That such other and further relief be granted to this petitioner as the nature of the case herein stated may in Equity require.

ARLINGTON BREWING COMPANY,

By ABE KING, *Its Secretary and Treasurer.*

LORENZO A. BAILEY,

*Solicitor for said Petitioner.*

58        DISTRICT OF COLUMBIA, ss:

I, Abe King, do solemnly swear that I have read the foregoing petition of Arlington Brewing Company and know the contents thereof; that I am the Secretary and Treasurer of said Company and as such and on behalf of said company have been authorized to subscribe and have subscribed said petition; that the facts in said petition stated upon personal knowledge are true and those therein stated upon information and belief, I believe to be true.

ABE KING.

Subscribed and sworn to before me this 24th day of October, A. D. 1908.

[SEAL.]

WM. F. COLUMBUS,  
*Notary Public, D. C.*



(Endorsed:) Leave to intervene as herein prayed is hereby granted. Job Barnard, Justice.

59

## EXHIBIT A. B. Co. No. 1.

*Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 50979.

ARLINGTON BREWING COMPANY (INC.), Plaintiff,  
vs.  
PATRICK E. DALY, Defendant.

1908, Aug. 31.—Judgment for pl'f for.....	\$272.50
with interest on \$50.00 fr. Apr. 15,	
1908, & on \$222.50 fr. Aug. 31, '08.	
Costs of Protest .....	
[SEAL.] Costs of Suit .....	8.45
" add'l to Satisfy .....	.40
Less credit, of \$— paid.....	

1908, Oct. 2.—Fi. Fa., issued.  
    " " returned ———.  
\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
By H. BINGHAM, *Ass't Clerk*.

Oct. 3, 1908.

60

## EXHIBIT A. B. Co. No. 2.

*Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 50980.

ARLINGTON BREWING COMPANY (INC.), Plaintiff,  
vs.  
PATRICK E. DALY, Defendant.

1908, Aug. 31.—Judgment for pl'f for.....	\$300.00
with interest from Aug. 31, 1908.	
Costs of Protest .....	
[SEAL.] Costs of Suit .....	8.45
" add'l to Satisfy .....	.40
Less credit, of \$— paid.....	

1908, Oct. 2.—Fi. Fa., issued.  
 “ “ returned ———.  
 \$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
 By H. BINGHAM, *Ass't Clerk*.

Oct. 3, 1908.

61

*Subpœna to Answer.*

Issued October 26, 1908.

\* \* \* \* \*

The President of the United States to 1. Patrick E. Daly, 2. Alexander H. Bell, 3. Clarence Walmsley, 4. George J. Records, 5. Harry P. Goldsborough, 6. Frank P. Madigan, 7. Philip Schwartz, Defendants:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of the intervening petition of Arlington Brewing Co., under pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 26<sup>th</sup> day of Oct., A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk*,  
 By F. E. CUNNINGHAM,  
*Assistant Clerk*.

MEMORANDUM.—That the defendant, herewith served, is to enter — appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed.)

Service accepted for all the within named defendants, Oct. 26, 1908.

ALEXANDER H. BELL,  
*Solicitor for said Defendants.*

62

*Petition of A. E. Norris and Co. to Intervene..*

Filed November 2, 1908.

\* \* \* \* \*

To the Honorable the Supreme Court of the District of Columbia, Holding an Equity Court:

The petition of Alfred E. Norris, trading as Alfred E. Norris & Company, respectfully shows:

*First.* That your petitioner is a citizen of the United States and a resident of the City of Philadelphia, State of Pennsylvania.



*Second.* That on the 16th day of March, A. D. 1908, your petitioner brought suit against the defendant, P. E. Daly, before Robert H. Terrell, a justice of the peace in and for sub-district No. 6 in the District of Columbia; that summons was duly issued and served, and on the 3rd day of April, A. D. 1908, your petitioner recovered judgment against the said defendant, P. E. Daly, for the sum of \$106.07 with interest from April 3rd, 1908, together with \$1.60 costs of suit; that thereafter, to wit, on the 30th day of October 1908, execution was issued upon the said judgment by the U. S. Marshal for the said District of Columbia, which was returned endorsed "No personal property found where to — levy"; that thereafter a transcript of the said judgment was duly filed on the law side of the Supreme Court of the District of Columbia in the law cause numbered 51070; that

63 thereafter a writ of fieri facias was issued upon the said judgment which said writ was on the — day of — 1908 returned by the marshal to whom the same was directed, and by him endorsed "Nulla bona" all of which will more fully appear by reference to a short copy of the said judgment and to the record of the proceedings in the said cause, which are hereto annexed and marked exhibit A.

*Third.* That your petitioner adopts the allegations of the original bill of complaint filed herein so far as they are applicable to the rights of your petitioner, and prays that the same may be considered as a part hereof to the same effect as if all of the said allegations had been set forth in detail herein.

Wherefore, your petitioner prays,

1. That he may be allowed to intervene herein as party complainant;

2. That process may issue against the defendants, and P. E. Daly, requiring them to answer the exigencies of this suit;

3. And for such other and further relief as the nature and circumstances of this — require, and to this honorable court seem meet and proper.

ALFRED E. NORRIS & CO.,  
By F. WALTER BRANDENBURG,  
*Their Att'y.*

BRANDENBURG & BRANDENBURG, *Att'ys.*

64 DISTRICT OF COLUMBIA, ss:

F. Walter Brandenburg upon oath deposes and says that he is one of the attorneys for the petitioner herein named and as such attorney has read the foregoing petition by him subscribed and knows the contents thereof; that the facts therein stated upon his personal knowledge are true and those stated upon information and belief he believes to be true.

F. WALTER BRANDENBURG.

Subscribed and sworn to before me this 2d day of November 1908.

[SEAL.]

LLOYD A. DOUGLASS,  
*Notary Public, D. C.*

(Endorsed.)

Nov. 2/08.

Leave granted petitioner to intervene & made party complainant.  
 JOB BARNARD, *Justice*.

65

*Short Copy.*

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 51070.

ALFRED E. NORRIS, Trading as Alfred E. Norris & Co., Plaintiff,  
 vs.  
 PATRICK E. DALY, Defendant.

1908, Apr. 3.—Judgment for pl'f for.....	\$106.07
with interest.	
Costs of Protest .....	
[SEAL.] Costs of Suit .....	8.45
“ add'l to Satisfy .....	.40
Less credit, of \$— paid.....	

1908, Oct. 31.—Fi. Fa., issued.  
 “ “ returned ———.

\$— of said costs due Clerk.

Test:

J. R. YOUNG, *Clerk*,  
 By H. BINGHAM, *Ass't Clerk*.

October 31, 1908.

66

*Subpœna to Answer.*

Issued November 2, 1908.

\* \* \* \* \*

The President of the United States to Patrick E. Daly, Alexander H. Bell, Clarence Walmsley, George J. Records, Harry P. Goldsborough, Frank P. Madigan & Philip Schwartz, Defendants:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of the intervening petition of Alfred E. Norris & Co., under pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 2d day of Nov. A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk*,  
 By F. E. CUNNINGHAM,  
*Assistant Clerk*.



MEMORANDUM.—That the defendant, herewith served, is to enter — appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed.)

Nov. 2, '08.

Service accepted.

ALEX. H. BELL.

67

*Auditor's Report.*

Filed December 3, 1908.

\* \* \* \* \*

This cause is referred to me to state the account of the Receiver and report the compensation for his services herein. After due notice I proceeded with the reference.

In the schedule herewith, I have first stated the account of the conduct of the business by the Receiver setting forth his current receipts and his expenditures for supplies purchased, payment of employees, water rent, light, repairs and miscellaneous items. This portion of the account shows a balance of receipts from the business.

I have next stated an account of the sale of the stock, fixtures *and* etc., charging the Receiver with the proceeds and a sum of money received from the purchaser as a refund of rent paid by the Receiver. I have allowed credit for payment of cost of advertisement of sale, personal tax and rent paid.

In view of the condition of the business at the time the Receiver took charge, the stock being nearly exhausted and the fact that during the period of about six months he gave the business his personal attention and so improved its condition as to realize the sum of \$4,000.00 in the final sale, I find and report that an allowance of \$300.00 would be fair and reasonable compensation.

JAS. G. PAYNE, *Auditor.*

\* \* \* \* \*

68 WEDNESDAY, November 25, 1908—1.30 p. m.

Hearing pursuant to notice.

Present: Mr. Bell for the defendants; Mr. Graham for complainant; Mr. L. A. Bailey for Arlington Brewing Co.; Messrs. Wolf & Strasberger, for intervenors.

Mr. Graham files vouchers one to twenty-seven to accompany statement of the account annexed to report of receivers.

Adjourned.

*Answer of Patrick E. Daly.*

Filed January 20, 1909.

\* \* \* \* \*

To the Honorable the Justice of said Court:

The separate answer of the defendant, Patrick E. Daly, to the Bill of Complaint and Intervening petitions filed, respectfully shows:—

1. That this defendant admits the allegations contained in said Bill of Complaint and Intervening petitions, in so far as the same recite the debts due by the said defendant to the several  
 69 creditors therein named, to be true, and consents to the disbursement of the funds in the hands of the Receiver according to law.

PATRICK E. DALY.

DISTRICT OF COLUMBIA, ss.:

I, Patrick E. Daly, on oath depose and say that I have heard read the foregoing Answer by me subscribed and know the contents thereof; that those facts stated therein upon my personal knowledge are true and those stated upon information and belief, I believe to be true.

PATRICK E. DALY.

Subscribed and sworn to before me this 20th day of January A. D. 1909.

J. R. YOUNG, *Clk*,  
 By F. E. CUNNINGHAM,  
*Ass't Clk*.

*Amendment Making Pierre Bonseigneur Party Defendant.*

Filed February 8, 1909.

\* \* \* \* \*

And now comes the complainant and by leave of the Court first had and obtained amends the Bill of Complaint herein by  
 70 making Pierre Bonseigneur a party defendant thereto.

LEON TOBRINER,  
*Solicitor for Complainant.*

(Endorsed.)

Leave is hereby given this 8th day of February, 1909 to file the within amended Bill.

JOB BARNARD, *Justice.*

*Decree Pro Confesso Against Pierre Bonseigneur.*

Filed May 19, 1909.

\* \* \* \* \*

It appearing to the Court that the defendant Pierre Bonseigneur was on the 9th day of February A. D. 1909, duly served with a writ of subpœna herein, and that he has failed to file his answer herein, it is, by the Court, this 19th day of May, A. D. 1909, ordered that the Bill of Complaint herein and the amendment thereto be and



the same are hereby taken pro confesso against the said defendant Pierre Bonseigneur.

By the Court.

JOB BARNARD, *Justice.*

71

*Amendment to Bill.*

Filed June 22, 1909.

\* \* \* \* \*

And now comes the complainant, and by leave of the Court first had and obtained, hereby amends the bill of complaint herein by making the National Capital Brewing Company, a corporation formed under the laws of the State of Virginia, a party defendant thereto.

EDWARD H. WYVILL,  
By LEON TOBRINER,  
*His Attorney.*

(Endorsed.)

Let this be filed.

HARRY M. CLABAUGH,  
*Chief Justice.*

*Answer of National Capital Brewing Company.*

Filed June 22, 1909.

\* \* \* \* \*

To the Honorable the Justice of said Court:

For answer to so much of said bill as it is advised it is necessary and material for it to answer, said defendant makes answer and says:

72 1. This defendant upon information and belief admits the averments of the third, fourth and fifth paragraphs of said bill.

2. Answering the seventh paragraph of said bill this defendant says that it is the present holder of the promissory note therein referred to; that it elects to hold as security for the payment of the said note the property and assets assigned and conveyed by the deed of trust from the defendant Bonseigneur to the defendants Bell and Madigan, bearing date October 21, 1907 and recorded in liber 3092 folio 370 et seq., of the Land Records of the District of Columbia in said paragraph referred to and hereby releases and renounces any claim or interest in and to the funds in the hands of the receiver herein arising out of the proceeds of the property transferred and conveyed by the deed of trust dated October 21, 1907, from said defendant Daly and wife and recorded in liber 3092 folio 372 et seq., of said Land Records.

3. This defendant is advised that it is unnecessary to the interests of this defendant that it should answer the averments of the other paragraphs of said bill.

NATIONAL CAPITAL BREWING  
COMPANY,  
By ALBERT CARRY, *President*.

I, Albert Carry, on my oath do depose and say that I am the President of the National Capital Brewing Company and that I  
73 have heard read the foregoing answer by it subscribed; that the statements therein made of my personal knowledge are true and those made on information and belief I believe to be true.

ALBERT CARRY.

Subscribed and sworn to before me this twenty-first day of June, A. D. 1909.

[SEAL.]

WILLIAM F. POWELL,  
*Notary Public, D. C.*

*Decree Authorizing Certain Payment, &c.*

Filed October 5, 1909.

\* \* \* \* \*

This cause coming on to be heard upon the Bill of Complaint and the amendments thereto, the petitions of the various parties who have intervened herein and have been made parties complainant, and the answers of the several defendants to said Bill of Complaint, and said intervening petitions, and having been duly considered, and it appearing to the Court that the property described in the Bill of Complaint has been sold under an order heretofore passed herein, and that, of the proceeds of sale, there remains in the hands of the receiver herein, as will appear from the report of the Auditor filed herein the third (3) day of December, A. D. 1908, the sum of  
74 \$3,601.66; and it appearing to the Court that the said property was subject to two certain deeds of trust which are fully described in paragraphs 6 & 7 of said Bill of Complaint and that the defendant The National Capital Brewing Company, the holder of the promissory note secured by the deed of trust to the defendants Bell and Madigan described in said paragraph 7, has elected, in its answer filed herein, not to enforce its lien under said deed of trust against said fund, but has released the same therefrom; it is therefore, this 5th day of October, A. D. 1909, adjudged, ordered and decreed that the decree pro confesso passed herein on the 19th day of May, A. D. 1909, against the defendant Pierre Bonseigneur be, and the same is hereby, made final and absolute; that the aforesaid fund be and the same hereby is held to be subject to the deed of trust to the defendants Bell and Walmsley and that from and out of said fund there be paid to the defendants Records and Goldsborough, the holders of the promissory notes secured thereby, the sum of one thousand dollars (\$1,000.00), with interest from the 29th day of August, A. D. 1907, at 6% per an-



num until paid; that the remainder of said fund be and the same is hereby declared distributable towards the satisfaction of the judgment of the complainant Edward H. Wyvill and to the various claims and judgments of the several intervening parties complainant, but the question of priority in the distribution of said fund among said complainant Edward H. Wyvill and said intervening parties complainant is not hereby determined; and this cause is hereby referred to the Auditor of this Court with instructions to state the account of the receiver herein, allowing first there-  
75 from the aforesaid claim of the defendants Records and Goldsborough and the remainder thereof to distribute among the said complainant Edward H. Wyvill and said intervening complainants according to the respective rights and priorities of their several claims.

By the Court,

JOB BARNARD, *Justice.*

We consent:

LEON TOBRINER,

*Sol'r for Compl't and for Intervenors Loughran, Myer, Pitts & Co., S. Grabfelder & Co., and Chr. Heurich Brew. Co.*

A. W. LEVENSALER,

*Sol'r for Intervenors H. & H. W. Catherwood, Michael F. McDonough, The J. A. Leary Co., Records & Goldsborough, The Buckeye Distillery Co., and Bridget L. Donohue.*

THE LOUIS ROTHSCHILD CO.,

By DAVID ROTHSCHILD, *Sol'r.*

LORENZO A. BAILEY,

*Sol'r for Arlington Brewing Co., Intervenor.*

JOS. A. BURKART,

*Sol'r for Intervenors The Gottschalk Co., Aug. Mencken & Bro., and The Roxbury Distilling Co.*

H. WINSHIP WHEATLEY,

*Sol. for Hambro Dist. & Distilling Co., Sol. for Italian-Swiss Colony.*

WOLF & ROSENBERG,

*Att'ys for Heineman Bros., Wm. A. Hall, A. E. Beitzel, Intervenors.*

BRANDENBURG & BRANDENBURG,

*Intervenors.*

MILTON STRASBURGER,

*Att'y for Wash. Tobacco Co.*

76

*Auditor's Report.*

Filed November 29, 1909.

\* \* \* \* \*

This cause is referred to me to state another account of the receivers and distribution of the fund in his hands. After due notice I proceeded with the reference.

In Schedule A herewith I have charged the receiver with the balance remaining in hand per the report of the Auditor filed December 8, 1908. I have allowed credit for payment of notes secured by deed of trust, together with accrued interest, premium paid for the renewal of the receiver's bond. I have reported an allowance to counsel for the receivers for professional services rendered as appears by the record, and proceedings in the case. I have also allowed costs of suit.

In Schedule B I have stated the distribution.

The original bill in this cause was filed on the 13th of August, 1908, by Edward H. Wyvill against Patrick E. Daly and others, the bill averring the recovery by the complainant of a judgment at law against the defendant Daly on the 27th of July, 1908, for the sum of five hundred dollars (\$500) with interest and costs, that thereupon a writ of execution was delivered to the Marshal and returned by him "not property upon which to levy." The bill further avers that the said defendant, Daly, has no property, real or personal, so far as the complainant has been able to ascertain, subject to execution at law, but is or was at the filing of the bill,  
77 the owner of an equitable interest in and to certain goods, chattels and personal property thereafter in the said bill of complaint set forth and described, that the said personal property was subject to a deed of trust given to secure an indebtedness in the sum of \$1,500, and was also subject to other incumbrances which are fully described in the bill.

The bill prayed the appointment of a receiver pending the cause, to take possession of the goods, chattels, license and lease in possession of the defendant Daly, and that the said property be sold under direction of the Court, the proceeds after paying all prior legal liens to be applied to the satisfaction of the complainants' judgment.

Upon the answer of the defendant, the Court on the 3rd of September, 1908, appointed a receiver, directed the defendant Daly to deliver possession of the business, chattels, property and franchise to the receiver, which was done.

On the 18th of September, 1908, the Hambro Distilling and Distributing Company filed a petition setting forth the recovery by that Company of a judgment at law in this Court against the defendant Daly and prayed leave to intervene as such judgment creditor, and that the said judgment be allowed to participate in distribution of the funds in the receivers hands. This was the first of twenty-six intervening petitions filed in this cause setting forth judgments and claims against the defendant Daly, and praying that the fund in the receivers' hands should be applied in payment of such claims.

78 At a general hearing under the order of reference most of the claims being represented by counsel present, it appeared that the judgments upon which the intervening petitions were filed were not all judgments of the Supreme Court of the District, included judgments of justices of the peace and of the Municipal Court. It also appeared that upon a number of the intervening peti-



tions no process was issued against the defendant Daly, and no answer was made by him to either of the said petitions. In other cases it appeared that no writ of execution was issued upon the judgments before the filing of the intervening petition, and objection was made by the complainant who also represented some of the intervening petitions, to all claims not based upon judgments of the Supreme Court of the District or upon which no writ of execution had been levied; or no process had been issued against the defendant Daly upon the intervening petition, and these objections were argued by counsel representing the different interests.

The latest utterance of the Court of Appeals on the subject of judgment creditors' bills is found in the "Ohio National Bank against Berlin, 26th Appeal cases page 229. Without following at length the reasoning of the Court in that case, it is sufficient to say that for the purpose of this distribution I have followed the ruling there laid down, distributing first to the complainant in full of his judgment, and next to the judgments represented by intervening petitions in the order in which the petitions were filed. Four of these  
79 judgments stand on the same basis as to time and receive partial distribution on their judgments.

JAS. G. PAYNE,  
J. G. P., Auditor.

#### SCHEDULE A.

##### *Second Account of John A. Barnes, Receiver.*

#### Dr.

To Balance in hand per report of Auditor filed December 8, 1908.....	3,601.66
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#### Cr.

By Paid Records and Goldsborough notes secured by deed of trust.....	1,000.00	
Interest on same.....	127.50	
Paid for renewal of bond.....	10.00	
Allowance to Leon Tobriner and Alexander H. Bell, counsel for receiver....	250.00	
Costs of suit.....	100.00	
Auditor's Fees.....	90.00	
	<hr/>	1,577.50
Balance to Schedule B.....		<hr/> 2,024.16

JAS. G. PAYNE, Auditor.

## SCHEDULE B.

*Distribution.*

Balance from Schedule A.....	2,024.16
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To Edward H. Wyvill:

Judgment No. 50,716, At Law....	500.00	
Interest from Oct. 26, 1907, to Nov.		
30, 1909 .....	62.84	
Costs .....	20.60	
	<hr/>	583.43

Hambro Distilling Co.:

Judgment No. 50,864, At Law....	639.58	
Interest on \$600 from January 22,		
1908 .....	71.40	
Costs .....	20.60	
	<hr/>	731.58

Chris Heurich Brewing Co.:

Judgment No. 51,041, At Law....	237.62	
Interest .....	35.09	
Costs .....	8.85	
	<hr/>	281.56

Dividend to this.....	253.27
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1,568.28

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1,568.28

To Meyer Pitts & Co.:

Judgment No. 51,040, At Law....	136.30	
Interest to May 26, 1908.....	2.15	
	<hr/>	138.45

Payment .....	19.63	
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	<hr/>	118.82
Interest Nov. 30, 1909.....	7.20	
Costs .....	10.95	
	<hr/>	136.97

Dividend to this.....	123.22
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Daniel Loughran:

Judgment No. 51,042, At Law....	78.25
Interest .....	8.15
Costs .....	8.60

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95.00

Dividend to this.....	85.46
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82	1,776.96
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To S. Grabfelder & Co.:

Judgment No. 51,043, At Law....	244.18
Interest .....	21.78
Costs .....	8.85

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274.81

Dividend to this.....	247.20
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2,024.16

JAS. G. PAYNE, *Auditor.*

\* \* \* \* \*

WEDNESDAY, November 3, 1909—1.30 p. m.

Hearing pursuant to notice.

Present: Mr. B. U. Graham and Mr. Leon Tobriner for complainant and intervening petitioners, S. Grabfelder & Co., Inc., Daniel Loughran, Chr. Heurich Brewing Co., Meyer & Pitts & Co.; Messrs. Wolf & Rosenberg for intervening petitioners, W. A. Hall, A. E. Beitzel and Heineman Brothers; A. W. Levensaler for H. and H. W. Catherwood, M. F. McDonough & Co., J. A. Leary Co., Records & Goldsborough, Buckeye Distilling Co., Bridget L. Donahue; Mr. A. H. Bell for defendant creditor, Patrick E. Daly; Jas. A. Burkhart for intervening petitioners, August Menken & Bro., Gottschalk Company, Roxbury Distilling Company; Lorenzo A. Bailey for Arlington Brewing Co.; M. J. Keane for Martin Hogan; H. Winship Wheatly for intervening petitioners, Harry Hamburger & Phillip Hamburger, trading as the Hambro Distilling Co., and the Italian Swiss Colony; Messrs. Brandenburg & Brandenburg for intervening petitioner A. E. Norris Co.; M. J. Strasburger for Washington Tobacco Company, intervening petitioner.

Mr. Graham presents claim of Mr. Leon Tobriner and B. U. Graham as solicitors for the complainant Edw. H. Wyvil for services rendered in the sum of \$250.

Mr. WHEATLY: If counsel for complainant is to be paid for his services to complainant it is a novelty to have that charge taken out of the estate.

Mr. Graham claims priority for claim of Edward H. Wyvil of \$500 in full, judgment of the Supreme Court of the District of Columbia with interest at 6 per cent from October 26, 1907, and with costs of suit. Offers short copies of judgment of the Supreme Court

of the District which are attached to the original bill filed by Edward H. Wyvil and the other copies attached to the petitions of intervening creditors whom I represent.

Mr. WHEATLY: I join with Mr. Graham in his contention to a certain degree, that the creditors should be paid in the way  
84 in which they intervened. I offer the judgment of the two cases of Harry Hamburger and Phillip Hamburger trading as the "Hambro Distilling Company, At Law No. 50,864 of the Supreme Court of the District of Columbia, also the short copy of judgment of Justice of the Peace Court in the Italian Swiss Colony, at Law No. 50,051.

Mr. GRAHAM: It will appear upon examination of the intervening petition filed by Mr. Wheatly that the Hambro Distilling Company was founded on a judgment of the Supreme Court of the District of Columbia for \$638. I have no objection to that; they make a further claim of \$237 due them from Daly on two certain promissory notes. No judgment has been obtained and I object to any distribution on that. I object to the offer of the short copy of the Justice of the Peace in the Italian Swiss Colony and my objection is that the judgment is not the judgment of the Court of record and will have to be proven as any other debt should be.

Mr. BAILY: I offer in evidence certified copy of judgment in the case of the Arlington Brewing Company against P. E. Daly At Law No. 50,979 Supreme Court of the District of Columbia and #50,980 between the same parties, which copies are attached to the intervening petition of the Arlington Brewing Company in this case.

Mr. WOLF: I offer in evidence short copies of three justices of the Peace judgments in favor of A. E. Beitzel \$146.13, Wm. A. Hall \$43.75; and Heineman Bros. \$72.50. No execution was issued on these judgments and I contend that a judgment of the Justice of  
85 the Peace stands equally in this case with the Supreme Court of the District of Columbia, and there is no necessity for execution being issued to give me the right to intervene in this cause.

Mr. GRAHAM: I object to the offer of the short copies of these judgments on the ground that they are not proof of the judgment on the ground that these judgment creditors have no standing here, not having issued execution on their judgments and on the further ground that even if execution had been issued they should have docketed their judgment in the Supreme Court of the District of Columbia and issued execution upon them.

Mr. STRASBURGER: I offer the judgment of the Washington Tobacco Company against P. E. Daly At Law No. 51,108 Supreme Court of the District of Columbia issued Oct. 30, 1908 for \$90.27 with costs and interest, execution issued Nov. 13, 1908 and returned. A short copy is attached to the petition.

Mr. LEVENSALER: I present short copy in the case of the Buckeye Distilling Company, judgment # 51,135, Supreme Court of the District of Columbia for \$152.90 costs, issued November 20, 1908, and returned nulla bona.



M. F. McDonough & Co.—judgment of the Supreme Court of the District of Columbia At Law No. 51,027 for \$138.74 with interest and costs, issued October 19, 1908, and returned nulla bona.

Records and Goldsborough, Judgment of the Supreme Court of the District of Columbia At Law No. 50,962 for \$468, interest and costs, issued October 23, 1908, and returned nulla bona.

86 Bridget L. Donoghue, short copy of Judgment of Supreme Court of the District of Columbia # 51,136 for \$250.00 interest and costs issued November 20, 1908, and returned nulla bona.

J. A. Leary Co., judgment obtained in the Supreme Court of the District of Columbia No. 50,977 for \$74.25 with interest and cost on September 16th, 1908, and returned nulla bona.

H. & H. W. Catherwood, judgment of the Supreme Court of the District of Columbia Sept. 1, 1908, for \$181.00 issued and returned nulla bona, At Law No. 50,990.

Mr. Jos. Burkart presents copy of judgment of the Justice of the Peace—Sub-District No. 6—Justice Terrell of Henry and August Menken trading as August Menken and Brother, for \$30 with interest and cost. Also an amendment obtained in the Supreme Court of the District of Columbia At Law No. 51,237.

I present judgment of Justice of the Peace, Terrell, for \$99.00 with interest and costs, issued May 4, 1908, also short copy of Judgment obtained in the Supreme Court of the District of Columbia At Law No. 51,236 for \$99.00.

Judgment of Justice of the Peace Terrell of the Roxbury Distilling Company against P. E. Daly for \$232.09 June 9, 1908, with interest and costs, also short copy of the judgment of the Supreme Court of the District of Columbia At Law No. 51,238 issued and returned nulla bona.

Mr. GRAHAM: I make the same objection here to the judgments of the Justice of the Peace that I have made previously. I  
87 make the further point that the judgments have become docketed in the Supreme Court and have therefore become extinct.

Mr. BRANDENBERG: I offer short copy of the Judgment of the Supreme Court of the District of Columbia for \$106.07 with interest. Issued and returned nulla bona, the same having been reduced to writing of the Municipal Court on Sept. 7, 1909, \$160.75—I will file transcript of judgment of the Municipal Court, judgment of the Bauner Distilling Company.

Mr. GRAHAM: I object to that.

Mr. M. J. Keane presents judgment of the Supreme Court of the District of Columbia At Law No. 51,100 for \$350. dated and costs of \$19.90.

Adjourned.

MONDAY, November 22, 1909—1:30 p. m.

Hearing pursuant to notice.

Present: Mr. Graham, Mr. A. H. Bell, Mr. H. W. Wheatley, Mr. Lorenzo Bailey, Mr. M. J. Keane.

Mr. GRAHAM: If the Auditor pleases, at the last session I made a claim of an allowance of \$250.00 for services rendered to the receiver

by myself. Upon refreshing my recollection and examining the papers in the case, I find that the claim should have been  
88 made on behalf of Mr. Alexander H. Bell and myself,—that we acted jointly as attorneys for the receiver in this case. I assume it would be best in giving or detailing the character of the services to be sworn as a witness.

After being duly sworn Mr. Graham continued:

After the bill had been filed in this cause and rule issued on the defendant Daly to show cause why a receiver should not be appointed, Mr. Bell, representing Mr. Daly conferred with me in reference to the situation and it was finally determined that a receiver should be appointed, it being necessary in our estimation. We considered the question as to whether the attorneys in the case should act as receivers or not, and concluded that inasmuch as we were dealing with a business of a peculiar character requiring personal attention of the receiver, that it would be better if we could possibly do so to obtain the services of some one familiar with the business.

Mr. Bell suggested Mr. Barnes who had for a number of years been engaged in the retail liquor business, and a client of his. Whereupon we sent for Mr. Barnes, had one or two conferences with him and he finally agreed to act as receiver and take charge of the business.

Mr. Barnes was not at that time engaged in the retail liquor business, and so was able to devote his entire time to the conduct of this business. I believe that this action on our part resulted in great benefit to the estate and Mr. Barnes by reason of his experience in the liquor business took a place which had greatly  
89 run down, conducted it for some little time and built it up so that we were able to make an advantageous sale of it.

During the course of the receivership we had numerous conferences with Mr. Barnes with reference to the conduct of the business, prepared the advertisements inviting bids for the purchase of the business, as result of which advertisements we received the bid of Mr. Hoolihan which was finally accepted by the Court. We had numerous conferences with Mr. Hoolihan, the purchaser; both of us made efforts to raise money for him to assist him in the purchase of the business, Mr. Hoolihan not having sufficient funds in his own hand to pay the entire purchase money. We conferred with respect to the payment of the rent of the premises, a petition of the landlord pressing for payment of the same, petition was prepared and presented to the court and an order obtained for the payment of the rent, we prepared the necessary papers for closing out the sale to Mr. Hoolihan and finally audited and prepared the accounts of Mr. Barnes which were presented to the Auditor in the former reference. I think for the services which we rendered that an allowance of \$250. would be reasonable.

ALEXANDER H. BELL being duly sworn testified as follows:

I would simply like to supplement Mr. Graham's statement without repeating all that was done by us with this:

Mr. Barnes who we selected for the position of receiver was a re-



90        tired saloon man of considerable means,—means that he had accumulated and made as a result of conduct of retail liquor business. To get him to accept this position was not an easy thing to do because he had retired and did not care to go into the business again, but at the personal solicitation of Mr. Graham and myself, probably particularly myself, he consented to serve. When Mr. Barnes took charge of the business he found practically no stock in trade in the place, and all that the receiver or the attorney had to offer to would-be purchasers was simply the retail liquor license and the fixtures of the business, the fixtures if removed probably would not have been worth over \$150 or \$250, and the license had no value except in that place.

I might also say that Mr. Daly when he first started this place was very successful, but got neglectful and let the business run down. Prior to Mr. Daly's time the place was a failure, however, and a bad name as a business place, so we had this to contend with in attempting to get a purchaser for the business. We advertised it in the Bulletin and News, probably in both papers and as a result of these advertisements we had quite a number of people to call to see us, many were my clients or had been clients and in the liquor business. We talked to them all, but found that few would give any price that would justify its acceptance, so that finally we got this man Mr. Hoolihan to make this price that we afterwards sold the place through the receiver for.

Mr. Hoolihan had never been a client of mine, but the man who backed him and let him have the purchase price had been a client of mine for years, and for that matter is still a client of mine,  
91        and it was through Mr. Graham's efforts and my own efforts that this Mr. Madden bought the place.

I am always rather hesitant about asking for a fee in a case of this kind, as I realize that attorneys frequently have to object to the fee, but in this case I would like to state for the information of the gentlemen interested I have never received any fee from Mr. Daly for anything *down* and never expect to get anything as Mr. Daly is hopelessly bankrupt and what I have done in this case I have really done to cut down as much of Mr. Daly's indebtedness as I could and that is why I wish the fund to be distributed pro rata.

Adjourned.

*Exceptions of Arlington Brewing Co. et al. to Auditor's Report Filed November 29, 1909.*

Filed December 16, 1909.

\* \* \* \* \*

The said Arlington Brewing Company, by counsel, hereby excepts to said Auditor's report and also separately to each part of said report hereinafter referred to, upon the following grounds, viz:

1. Because the Auditor has therein reported that the complainant Edward H. Wyvill is entitled to receive a portion of the balance for distribution as shown in Schedule B with said report; whereas,  
92        it does not appear that the said complainant is entitled to receive said portion or any portion of said balance, but on the

contrary it does appear on the face of the record that the court was without jurisdiction to entertain and grant relief upon the bill of complaint of said Wyvill.

2. Because the Auditor has therein reported the complainant and certain intervening petitioners mentioned in Schedule B with said report to be entitled to receive, in the aggregate, the whole amount of said balance for distribution and has failed to report this exceptant or any of the parties joining in these exceptions to be entitled to receive any part of said balance; whereas the complainant in his bill of complaint states that he "brings this suit in his own right as a judgment creditor of the defendant Patrick E. Daly and on behalf of such other judgment creditors of said defendant Daly as may properly intervene and become parties hereto," and relying thereon this exceptant and each exceptant joining herein as such judgment creditor did properly intervene and become a party to the suit and thereby became and is entitled to receive a share of said balance.

3. Because the Auditor has therein reported Messrs. Tobriner and Bell to be entitled to receive an allowance in the sum of \$250. for services as counsel for the receiver; whereas, the said Messrs. Tobriner and Bell were counsel of record herein for the complainant and the defendant Daly, respectively, and it does not appear that they were ever employed by the receiver but if so employed it was without consent of this exceptant or of any intervening petitioner herein, and the receiver's account was previously settled and  
93 closed and no proper cause is shown for such allowance.

4. Because the Auditor therein failed to report this exceptant or any of the parties joining in these exceptions to be entitled to payment of its claim stated in its intervening petition, or entitled to share in the distribution of said balance mentioned in said Schedule B; whereas, it appears on the face of the proceedings herein that this exceptant and each party joining herein had properly intervened in this suit and become a party thereto and had exhausted its remedy at law before so intervening and the bill of complaint of said Wyvill was so framed and filed as to assure this exceptant and all other judgment creditors of the defendant Daly of a pro rata distribution of the fund to be administered.

5. Because the Auditor therein dealt with this suit as one in the nature of equitable attachment and has reported the balance for distribution to be distributable to six only of the parties to the suit; whereas one of them, the complainant Wyvill, as appears by his bill of complaint, abandoned all right if any he had, and all claim, to priority and invited all other judgment creditors of said Daly to intervene and share in said distribution upon an equality substantially as in Bankruptcy proceedings and the complainant is bound by the terms and effect of such invitation.

ARLINGTON BREWING CO.,  
By LORENZO A. BAILEY,  
*Its Counsel.*



94 We, the undersigned, parties to the above entitled suit, join in the foregoing exceptions.

H. & H. W. Catherwood, M. F. McDonough & Co., The J. A. Leary Co., Records & Goldsborough, The Buckeye Distillery Co., and Bridget L. Donohue, by their attorney A. W. Levensaler. Alfred E. Norris & Co. by Brandenburg & Brandenburg, its att'ys. Wolf & Rosenberg, Att'ys for Intervenor, Heineman Bros. et al. Martin Hogan Michael J. Keane Att'y.

Mr. Leon Tobriner and Mr. A. H. Bell.

Mr. Leon Tobriner, counsel for complainant Wyvill, and intervening petitioners Chr. Heurich Brewing Co., Meyer, Pitts & Co., Daniel Loughran, S. Grabfelder & Co.

Mr. H. Winship Wheatley, Counsel for intervening petitioner Hambro Distilling Co.

Mr. A. H. Bell, Counsel for defendant Daly.

Please take notice that the foregoing exceptions will be for hearing on the 24th day of December, 1909, at the opening of court or as soon thereafter as counsel may be heard.

LORENZO A. BAILEY,  
*Counsel for Exceptant Arlington Brewing Company.*

Dec. 16, 1909.

95 *Decree Overruling Exceptions to Report of Auditor, &c.*

Filed January 24, 1910.

\* \* \* \* \*

This cause coming on to be heard upon the exceptions filed herein on the 16th day of December, 1909, by the Arlington Brewing Company, H. and H. W. Catherwood, M. F. McDonough & Co., The J. A. Leary Co., Records and Goldsborough, The Buckeye Distilling Co., Bridget L. Donohue, Alfred E. Norris & Co., and Heineman Bros., to the report of the Auditor filed herein the ninth (9th) day of November, A. D. 1909; having been argued by counsel, and considered by the Court, it is, by the Court, this 24th day of January, A. D. 1910, adjudged, ordered, and decreed that the said exceptions be and the same are hereby overruled; and it is further ordered that the said Auditor's report be and the same is hereby finally ratified and confirmed, and John A. Barnes, Receiver herein, is hereby authorized and directed to make distribution of the funds in his hands in accordance with said Auditor's report.

JOB BARNARD, *Justice.*

From the foregoing decree the said exceptants, by their counsel respectively, here now in open court pray an appeal to the Court of Appeals of the District of Columbia and the same is hereby allowed and noted and the penalty of the bond for costs on said appeal shall be in the sum of One hundred dollars.

96

JOB BARNARD, *Justice.*

*Bond for Appeal to Court of Appeals.*

Filed February 8, 1910.

\* \* \* \* \*

Know all men by these presents, That we, Arlington Brewing Company, H. & H. W. Catherwood, Alfred E. Norris & Co., as principals, and The United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto the above named Edward H. Wyvill, Patrick E. Daly, and to Hambro Distilling Company, Chr. Heurich Brewing Company, Meyer, Pitts and Company, Daniel Loughran, S. Grabfelder and Company, intervenors in this cause, in the full sum of One hundred dollars to be paid to the said Edward H. Wyvill, Patrick E. Daly, Hambro Distilling Company, Chr. Heurich Brewing Company, Meyer Pitts and Company, Daniel Loughran, S. Grabfelder and Company, their respective executors, administrators, successors, or assigns. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents. Sealed with our seals, and dated this 31st day of January, in the year of our Lord one thousand nine hundred and ten.

Whereas, the above-named Arlington Brewing —, H. &  
97 H. W. Catherwood, Alfred E. Norris & Co. have prosecuted  
an appeal to the Court of Appeals of the District of Columbia, to reverse the Decree rendered in the above suit by the said Supreme Court of the District of Columbia:

Now, therefore, the condition of this obligation is such, That if the above-named Arlington Brewing Company, H. & H. W. Catherwood, Alfred E. Norris & Co. shall prosecute their said appeal and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

By	ARLINGTON BREWING COMPANY,	[SEAL.]
	LORENZO A. BAILEY, <i>Att'y in Fact.</i>	
	H. & H. W. CATHERWOOD,	[SEAL.]
By	A. W. LEVENSALER, <i>Att'y in Fact.</i>	
	ALFRED E. NORRIS & CO.,	[SEAL.]
By	F. WALTER BRANDENBURG, <i>Att'y in Fact.</i>	
	THE UNITED STATES FIDELITY & GUARANTY CO.,	[SEAL.]
By	GEORGE O'DONNELL, <i>Attorney in Fact.</i>	

Sealed and delivered in the presence of—

GEORGE O'DONNELL.

Approved the 8th day of February, 1910.

JOB BARNARD,  
*Justice S. C. D. C.*



*Bond for Appeal to Court of Appeals.*

Filed February 15, 1910.

\* \* \* \* \*

Know all men by these presents, That we, M. F. McDonough & Company, The J. A. Leary Company, Records & Goldsborough, The Buckeye Distillery Company and Bridget L. Donohue, as principals, and The United States Fidelity and Guaranty Company, a corporation of the State of Maryland, as surety, are held and firmly bound unto the above named Edward H. Wyvill, Patrick E. Daly and to the Hambro Distilling Company, Chr. Heurich Brewing Company, Meyer Pitts & Company Daniel Loughran and S. Grabfelder, intervenors in the cause in the full sum of one hundred (100) dollars to be paid to the said Edward H. Wyvill, Patrick E. Daly and to the Hambro Distilling Company, Chr. Heurich Brewing Company, Meyer Pitts & Company, Daniel Loughran and S. Grabfelder & Company, their respective executors, administrators, successors, or assigns. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents. Sealed with our seals, and dated this 15th day of February, in the year of our Lord one thousand nine hundred and ten.

Whereas the above-named M. F. McDonough & Company, The J. A. Leary Company, Records & Goldsborough, The Buckeye Distillery Company and Bridget L. Donohue have prosecuted an appeal to the Court of Appeals of the District of Columbia, to  
 99 reverse the Decree rendered in the above suit by the said Supreme Court of the District of Columbia:

Now, therefore, the condition of this obligation is such, That if the above-named M. F. McDonough & Company, The J. A. Leary Company, Records & Goldsborough, The Buckeye Distillery Company and Bridget L. Donohue shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

M. F. McDONOUGH & COMPANY,  
 THE J. A. LEARY COMPANY,  
 RECORDS & GOLDSBOROUGH,  
 THE BUCKEYE DISTILLERY  
 COMPANY, AND  
 BRIDGET L. DONOHUE,

By Their Att'y in Fact, A. W. LEVENSALE. [SEAL.]

THE UNITED STATES FIDEL-  
 ITY AND GUARANTY CO.,

By GEORGE O'DONNELL, [SEAL.]  
*Att'y in Fact.*

Sealed and delivered in the presence of—  
 ———.

Approved the 15th day of Feb'y, 1910.

JOB BARNARD,  
*Justice S. C. D. C.*

100 Supreme Court of the District of Columbia.

No. 27988.

Parties.	Action.	Complainant's solicitor.
Edward H. Wyvill	Judgment	L. Tobriner.
v.	Creditors'	J. A. Burkart.
1, Patrick E. Daly,	Bill.	H. W. Wheatley.
2, Alexander H. Bell,		D. Rothschild.
3, Clarence Walmsley,		
4, George J. Records,		Defendant's Solicitor.
5, Harry P. Goldsborough,		Alex. H. Bell.
6, Frank P. Madigan,		
7, Philip Schwartz,		
8, Pierre Bonseigneur,		
9, Nat. Capital Brew. Co.		

Date.	Proceedings.	
1908, Aug. 13.	Deposit toward costs by Tobriner	
" " "	Bill, Appearance, Order & Jurat,	filed.
" " "	" Spa. to Answer & Copy to No. 1	
" " 14.	" " " " 2,	
	3, 4, 5, 6, 7	"
" " "	Rule on deft. No. 1, returnable Aug. 25,	
	M. 81 P. 285 Copy 1	"
" " 15.	Spa. to Answer returned served No. 1	"
" " "	Rule returned served deft. No. 1	"
" " 25.	Hearing on Rule continued M. 81 P. 303	"
" Sep. 1.	Appearance of Bell for Defts. 1, 2, 3, 4, 5, 6,	
	7. Order	"
" " "	Spa. to ans. returned served upon defts. 1,	
	6, 7; 3, 4 & 5 "not found"	
" " 3.	Answer of Patrick E. Daly and Jurat	"
" " "	Order app't'g John A. Barnes Receiver.	
	Bond \$2,000.00 M 81 P 324	
" " 4.	Bond of Receiver for \$2,000.00 approved	"

101

1908, Sep. 18.	Additional deposit for costs by W. H. Wheatley for Intervenor Pet. of Hambro Distilling Co. et al.	
" " "	Motion of Hambro Distilling Co. et al. for leave to Intervene & Jurat	filed.
" " "	Int. Petition of Hambro Distilling & Dist'b'g Co. Fiat of Gould J. Jurat & Appearance Wheatley	"
" " "	Int. Petition Spa. to answer and copies (7)	
" " 25.	" " " " returned	"
	served all	



Date.	Proceedings.	
1908, Sep. 28.	Report of Receiver & Exhibit	filed.
" " "	Order, authorizing Receiver to Accept certain offer. M 81 P 362	"
" Oct. 1.	Additional deposit for costs by Rothschild for Int. Pet. of L. Rothschild Co.	
" " "	Petition for leave to Intervene by L. Rothschild Co. Fiat of C. J.	"
" " "	Intervening Petition of L. Rothschild Co. & app. of D. Rothschild & Exhibit	
" " 8.	Additional deposit for costs by J. A. Burkart for Int. Pet. of Gottschalk Co.	
" " "	Additional deposit for costs by J. A. Burkart for Int. Pet. of Roxbury Distilling Co.	
" " "	Additional deposit for costs by J. A. Burkart for Int. Pet. of Henry Mencken	
" " "	Int. Petition of Gottschalk Co. Fiat Wright J. Exhibit & app. of J. A. Burkart	filed.
" " "	Int. Petition of Roxbury Dist. Co. Fiat Wright J. Exhibit & app. of J. A. Burkart	"
" " "	Int. Petition of Hy. Mencken. Fiat Wright J. Exhibit & app. of J. A. Burkart	"
102		
1908, Oct. 9.	Additional deposit for costs by A. W. Levensaler for Int. Pet. of H. & H. W. Catherwood	
" " "	Order for leave to Intervene M 81 P 387	filed.
" " "	Int. Petition of H. & H. W. Catherwood & app. of A. W. Levensaler	"
" " "	Int. Petition of H. & H. W. Catherwood Spa. to Answer & copy to No. 2	"
" " 16.	Additional deposit for costs by A. W. Levensaler for Int. Pet. of The J. A. Leary Co.	
" " "	Order granting The J. A. Leary Co. leave to intervene M 82 P 14	"
" " "	Int. Petition of The J. A. Leary Co. & app. of A. W. Levensaler	"
" " "	Int. Petition of The J. A. Leary Co. Spa. to Answer & Copy to No. 2	"
" " "	Receiver authorized to pay rent M 82 P 13	"
" " "	Petition of Receiver " " "	"
" " 20.	Additional deposit for costs by Wolf & Rosenberg for Int. Pet. of Heineman Bros.	
" " "	Int. Petition of Heineman Bros. Fiat of Barnard J. Exhibit & app. Wolf & Rosenberg	
" " "	Int. Petition of Heineman Bros. Spa. to Answer & Copy to deft. No. 1	"
" " 22.	Additional deposit for costs by B. U. Graham for Int. Pet. of Meyer Pitts & Co.	
" " "	Additional deposit for costs by B. U. Graham for Int. Pet. of S. Grabfelder & Co.	
" " "	Additional deposit for costs by B. U. Graham for Int. Pet. of Chr. Heurich Brew Co.	

103

Date.	Proceedings.	
1908, Oct. 22.	Additional deposit for costs by B. U. Graham for Int. Pet. of D. Loughran	
" " "	Leave granted Meyer Pitts & Co. et al. to intervene M 82 P 28	filed.
" " "	Int. Petition of Meyer Pitts & Co. & app. of Leon Tobriner & B. U. Graham & Jurat & Exhibit	"
" " "	Int. Petition of Meyer Pitts & Co. Spa. to Answer & Copy to deft. No. 1	
" " "	Int. Petition of S. Grabfelder & Co. & app. of Leon Tobriner & B. U. Graham & Jurat & Exhibit	"
" " "	Int. Petition of S. Grabfelder & Co. Spa. to Answer & Copy to deft. No. 1	
" " "	Int. Petition of Chr. Heurich Brew Co. & app. of Leon Tobriner & B. U. Graham & Jurat & Exhibit	"
" " "	Int. Petition of Chr. Heurich Brew. Co. Spa. to Ans. & Copy to deft. No. 1	
" " "	Int. Petition of Daniel Loughran & app. of Leon Tobriner & B. U. Graham & Jurat & Exhibit	"
" " "	Int. Petition of Daniel Loughran Spa. to Answer & Copy to deft. No. 1	"
" " 23.	Additional deposit for costs by A. W. Levensaler for Int. Pet. of M. F. McDonough	
" " "	Order granting leave to M. F. McDonough to intervene M 82 P 30	"
" " "	Int. Pet. of M. F. McDonough, app. of A. W. Levensaler, & Exhibit	"
" " "	Int. Pet. of M. F. McDonough, Spa. to Answer & Copy to deft. No. 2	"
" " "	Int. Pet. of S. Grabfelder & Co. Spa. to answer returned service accepted	"

104

1908, Oct. 23.	Int. Pet. of Chr. Heurich Brew. Co. Spa. to answer returned service accepted	filed.
" " "	Int. Pet. of Daniel Loughran. Spa. to answer returned service accepted	"
" " "	Int. Pet. of Meyer Pitts & Co. Spa. to answer returned service accepted	"
" " 26.	Additional deposit for costs by L. A. Bailey for Int. Pet. of Arlington Brew. Co.	
" " "	Int. Pet. of Arlington Brewing Co. & app. of L. A. Bailey. Exhibits (2) & Fiat	"
" " "	Int. Pet. of Arlington Brewing Co. Spa. to Answer, no copy	"
" " 27.	Int. Pet. of Arlington Brewing Co. Spa. to Answer returned service accepted	"



Date.	Proceedings.	
1908, Oct. 29.	Answer of Geo. J. Records & H. P. Goldsborough	filed.
" " "	Answer of Clarence Walmsley	"
" Nov. 2.	Additional deposit for costs by Brandenburg for Int. Pet. of A. E. Norris & Co.	
" " "	Int. Pet. of Alfred E. Norris & Co. Fiat of Barnard J. & app. of Brandenburg & B. & Exhibit	"
" " "	Int. Pet. of Alfred E. Norris & Co. Spa. to answer, no copy	"
" " "	Int. Pet. of Alfred E. Norris & Co. Spa. to Answer returned service accepted	"
" " 3.	Spa. to Answer of Oct. 20" as to Deft. No. 1, ret'd; Not to be found.	"
" " 5.	Spa. to Answer of Oct. 9th as to Deft. No. 2, ret'd; Not served, Marshal fee not paid	"

105

1908, Nov. 5.	Spa. to Answer of Oct. 16th as to Deft. No. 2 ret'd; Not served, Marshal fee not paid	filed.
" " 6.	Additional deposit for costs by A. W. Levensaler for Int. Pet. of Records & Goldsborough	
" " "	Order granting leave to Records & Goldsborough to intervene M 82 P 72	"
" " "	Int. Petition of Records & Goldsborough, app. of A. W. Levensaler & Exhibit	"
" " 9.	Answer of A. H. Bell to Bill & Int. Petitions & Jurat	"
" " 13.	Report of Receiver, Jurat & Exhibit	"
" " "	Order referring cause to Auditor M. 82 P. 91	"
" " 16.	Additional deposit for costs by M. Strasburger for Int. Pet. of Wash. Tobacco Co.	
" " "	Int. Pet. of Wash. Tobacco Co. Fiat Wright, J. Exhibit & App. of M. Strasburger	"
" " "	Int. Pet. of Wash. Tobacco Co. service accepted by A. H. Bell Att'y	"
" " "	Int. Pet. of Heineman Bros. filed Oct. 20" accepted by A. H. Bell Att'y	"
" " 17.	Answer of deft. No. 6. F. P. Madigan	"
" " 30.	Additional deposit for costs by A. W. Levensaler for Int. Pet. of Bridget L. Donohue	
" " "	Additional deposit for costs by A. W. Levensaler for Int. Pet. of Buckeye Dist'y Co.	
" " "	Order granting leave to The Buckeye Distillery Co. to intervene M 82 P 123	"
" " "	Order granting leave to Bridget L. Donohue M 82 P 123	"

106

Date.	Proceedings.	
1908, Nov. 30.	Int. Petition of Buckeye Distillery Co. Exhibit & Appearance of A. W. Levensaler	filed.
" " "	Int. Petition of Bridget L. Donohue. Exhibit & Appearance of A. W. Levensaler	"
" Dec. 1.	Spa. to Answer of Oct. 23rd returned "not served, Marshal's fee not paid"	"
" " 3.	Auditor's Report & Pkgs. (2) vouchers	"
" " 17.	Amended Int. Petition of Roxbury Distilling Co. Fiat of Barnard, J. & Exhibit	
" " "	Amended Int. Petition of Aug. Mencken & Bro. Fiat of Barnard, J. & Exhibit	
" " "	Amended Int. Petition of Gottschalk Co. Fiat of Barnard, J. & Exhibit	
1909, Jan. 19.	Spa. to Answer Int. Pet. of Catherwood et al., no copy	issued.
" " "	Spa. to Answer Int. Pet. of M. F. McDonough, no copy	"
" " "	Spa. to Answer Int. Pet. of Leary & Co., no copy	"
" " "	Spa. to Answer Int. Pet. of Records & Goldsborough, no copy	"
" " "	Spa. to Answer Int. Pet. of Buckeye Dis. Co., no copy	"
" " "	Spa. to Answer Int. Pet. of B. L. Donohue, no copy	"
" " 20.	Answer of deft. No. 1 to Bill & Int. Petitions & Jurat	filed.
" " 27.	Answer of deft. No. 7 to Bill & Int. Petitions	"
" " "	Spa. to Answer Int. Pet. of Catherwood et al. to deft. No. 1 ret'd served	"

107

1909, Jan. 27.	Spa. to Answer Int. Pet. of McDonough to deft No. 1 ret'd served	filed.
" " "	Spa. to Answer Int. Pet. of Leary to deft. No. 1 ret'd served	"
" " "	Spa. to Answer Int. Pet. of Records & G. to deft. No. 1 ret'd served	"
" " "	Spa. to Answer Int. Pet. of Buckeye Dis. Co. to deft. No. 1 ret'd served	"
" " "	Spa. to Answer Int. Pet. of Donohue to deft. No. 1 ret'd served	"
" Feb. 8.	Amended Bill making Pierre Bonseigneur party deft. Fiat.	"
" " "	Amended Bill Spa. to answer & Copy (1)	
" " 9.	" " " " " returned served	"
	No. 8	



Date.	Proceedings.	
1909, Jan. 23.	Appearance of A. H. Bell for No. 8 order	filed.
" Mch. 24.	Additional deposit for costs by M. J. Keane for Int. Petition of Martin Hogan	
" " "	Int. Petition of Martin Hogan & Exhibit. Fiat of Barnard J. & app. of M. J. Keane	"
" May 19.	Decree pro confesso against No. 8 ordered M 82 P 495	"
" June 22,	Amended Bill. Fiat of Clabaugh, C. J.	"
" " " "	Answer of deft. No. 9 & ap- pearance pp.	"
" Oct. 5.	Decree authorizing certain payment and re- ferred to Auditor. M 84 P 314	"
" Nov. 11.	Short Copy.	
" " 16.	Answer of defts. 1, 2, 3, 4, 5, 6, 7, to inter- vening petition of Martin Hogan	"
" " 29.	Auditor's Report & Pkg. vouchers	"
108		
1909, Dec. 16.	Auditor's Report. Exceptions to by Arling- ton Brewing Co.	filed.
1910, Jan. 24.	Auditor's Report. Exceptions to overruled & Report confirmed, etc. M 85 P 77.	"
" Feb. 8.	Bond on appeal of Arlington Brew. Co. et al. for \$100.—Approved	"
" " 15.	Bond on appeal of M. F. McDonough Co. et al. for \$100.—Approved	"
" " 18.	Designation of Record on appeal for Int. Pet. of Hambro Dis. Co.	"
" " 23.	Designation of Record on appeal for Int. Pet. of Arlington Brew. Co. et al.	"
" Mch. 22.	Order extending time to file record in Ct. of Appeals M 85 P 226.	"

109 *Order of Appellees to Include Enumerated Items in Tran-  
script of Record on Appeal.*

Filed February 18, 1910.

\* \* \* \* \*

The Clerk, in preparing the transcript of record on appeal, will please include the following in addition to the items specified by appellants in their designation filed herein.

1. The date of issue of the subpoenas to answer referred to in items 6, 8, 9, 10 and 11 of appellants' designation.

2. Memorandum showing issue of subpoena to answer and the date thereof on the original bill of complaint of Edward H. Wyvill and the return thereon.

3. Memorandum showing approval of receiver's bond and the date thereof.

4. Both the petition for leave to intervene filed September 18, 1908 and the intervening petition filed September 18, 1908 of Harry Hamburgr and Philip Hamburger, co-partners trading as Hambro Distilling and Distributing Company, all exhibits attached to said petitions, the order of Court granting leave to said parties to intervene and the date of issue of the subpoena to answer issued on said petitions with the return thereon.

5. Amended bill filed February 8, 1909 and order thereon.

6. Decree pro confesso of May 19, 1909 against defendant  
110 Pierre Bonseigneur.

7. Answer of the defendant National Capital Brewing Company filed June 22, 1909.

8. In copying the decree passed October 5, 1909, referred to in item 15 of appellants' designation include the consent of the various attorneys appearing thereon.

9. Include the testimony of Alexander H. Bell and Byron U. Graham, attached to the Auditor's report of November 29, 1909.

10. Copy the appeal bonds filed February 8, 1910 and February 15, 1910.

11. Copy all docket entries in this case.

12. This order.

LEON TOBRINER,

*Attorney for Edward H. Wyvill, Daniel Loughran,  
Chr. Heurich Brewing Co., S. Grabfelder & Co.,  
Ferdinand Meyer and R. Walter Graham, Co-  
partners, Trading as Meyer, Pitts & Co., Appellees.*

H. WINSHIP WHEATLEY,  
G.,

*Attorney for Harry Hamburger and Philip Ham-  
burger, Co-partners, Trading as Hambro Distill-  
ing & Distributing Co., Appellees.*

*Directions to Clerk for Preparation of Transcript of Record.*

Filed February 23, 1910.

\* \* \* \* \*

The Clerk will please prepare the transcript of record on appeal and include therein the following, viz:

111 1. Bill of complaint and Exh. 1.

2. Rule Aug. 14, 1908.

3. Appearance of counsel for defendants, Sept. 1, 1908.

4. Answer of def't Daly, Sept. 3, 1908.

5. Order appointing Receiver.

6. Intervening petition of Hambro Distilling Co. and Exh. and order allowing petitioner to intervene; fiat thereon; memo. showing issue of subpoena to answer and return thereon.

7. Order authorizing Receiver to accept offer.

8. Petition of H. & H. W. Catherwood & Exh.; order granting



leave to intervene; memo. showing issue of subpoena to answer Jan'y 19, 1909, and return thereon.

9. Petitions of Meyer, Pitts & Co. & Exh.; S. Grabfelder & Co. & Exh.; Chr. Heurich Brewing Co. & Exh.; D. Loughran & Exh.; order granting leave to intervene; memo. showing issue of subpoena to answer and return thereon.

10. Petition of Arlington Brewing Co. & 2 exhibits; fiat thereon; memo. showing issue of subpoena and acceptance of service thereon.

11. Petition of Alfred E. Norris & Co. & Exh.; fiat thereon; memo. showing issue of subpoena to answer and acceptance of service thereon.

12. Auditor's Report, Dec. 3, 1908 (omitting itemized account of receiver).

13. Answer of def't Daly to Bill and intervening petitions, Jan'y 20, 1909.

14. Amended Bill, June 22, 1909; fiat thereon.

112 15. Decree for certain payments and reference to Auditor, Oct. 5, 1909, omitting consent of various counsel.

16. Auditor's Report, Nov. 29, 1909, and schedules attached, omitting testimony.

17. Exceptions by Arlington Brewing Co., et al., to Auditor's Report.

18. Decree overruling exceptions and allowing appeal.

19. Memo. showing filing of appeal bond.

20. This order.

Please omit all repetition of caption and title of cause after the original bill of complaint.

LORENZO A. BAILEY,

*Counsel for Arlington Brewing Co.*

BRANDENBURG & BRANDENBURG,

*Counsel for A. E. Norris & Co.*

A. W. LEVENSALER,

*Counsel for H. & H. W. Catherwood.*

### *Memorandum.*

March 22, 1910.—Time in which to file Transcript of Record in Court of Appeals extended to, and including, April 15th, 1910.

113 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 112, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 27988 in Equity, wherein Edward H. Wyvill is Complainant and Patrick E. Daly, et als. are

Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the City of Washington, in said District, this 13th day of April, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2151. Arlington Brewing Company et al., appellants, vs. Edward H. Wyvill et al. Court of Appeals, District of Columbia. Filed Apr. 14, 1910. Henry W. Hodges, clerk.



